Official Gazette

REPUBLIC OF THE PHILIPPINES

Edited at the Office of the President, under Commonwealth Act No. 638
Entered as second-class matter, Manila Post Office, December 26, 1905

VOL. 48 MANILA, PHILIPPINES, FEBRUARY 1952 No. 2

TABLE OF CONTENTS

THE OFFICIAL MONTH IN REVIEW

THE President on February 1 signed Executive Order No. 489, prohibiting the collection by private individuals or entities of abandoned scrap metals, unless they can establish their ownership. The order designated the National Shipyards and Steel Corporation as the government agency to collect the same.

On the same day the Cabinet went on record in favor of nationalization of labor to stop the practice of many companies in the Philippines of importing the services of aliens instead of giving employment to Filipinos. The President directed Secretary of Justice Oscar Castelo to draft a bill providing for the nationalization of labor to be submitted to the present session of Congress.

ON February 5, the President suspended, effective immediately, Sugar Quota Administrator Vicente Bunuan pending investigation of his actuations in connection with the implementation of the directive of the Office of the President with regard to C sugar. Ramon L. Paguia was designated as Acting Sugar Quota Administrator to replace Bunuan during his suspension. Justice Secretary Oscar Castelo was directed by the President to conduct the investigation to find out why Bunuan made amendments to the directive of the Office of the President without consulting the Chief Executive.

In the course of his conference with the PRISCO board of directors at Malacañan in the afternoon of the same day, the President gave blanket authority to the PRISCO directors to effect retrenchment in all services of the corporation, including its auditing services which had been previously objected to by PRISCO auditors for the reason that their office is outside the jurisdiction of the executive department.

STEPS were taken by the Cabinet on February 6 to protect the public from the activities of certain organizations collecting fees for the registration of Japanese war notes. The President directed Justice Secretary Oscar Castelo to investigate such organizations and to alert all provincial fiscals to protect the trusting public from being victimized.

The Cabinet also raised the minimum salary of employees from ₱1,140 to ₱1,440 per annum or ₱120 a month in conformity with the Minimum Wage Law, when it took up the national budget, which was submitted to the Cabinet the previous day by Budget Commissioner Pio Joven. This action involves an additional appropriation of ₱12 million. The Cabinet made exception to its policy of not creating new positions in the case of the Bureau of Internal Revenue by providing additional positions for 80 internal revenue agents to bolster the collection of taxes.

IN consonance with President Quirino's policy and desire to have closer contact with local government officials, Malacañan announced on February 7 that Friday of each week has been set aside as conference day with provincial, city, and municipal officials. This does not, however, constitute a blanket authority for local officials to come to Manila without permission from the Office of the President. This arrangement has been made to give local officials opportunity to bring their respective problems before the Chief Executive.

Malacañan also announced that the President had signed Executive Order No. 491, making the president of the Philippine Mental Health Association a member of the National Advisory Council. The President also issued on that day Administrative Order No. 178, ordering department heads, bureaus, and office chiefs, and all other administrative officials not to incur expendi-

tures in excess of appropriations alloted their respective offices. He also ordered the Export Control Committee to suspend immediately any exportation of sugar by Filadelfo Rojas to Japan. Justice Secretary Oscar Castelo directed to prosecute Rojas for libel or for any other action for which he was liable or answerable. Castelo was also ordered to investigate the records of the Sugar Quota Administration where papers were reported tampered for purposes of converting A sugar to C sugar to facilitate the export of this commodity to Japan.

The President's directive were made following the receipt of a copy of a letter from Senate President Quintin Paredes, supposed to have been written by Filadelfo Roxas to a Japanese firm in Tokyo wherein Rojas made assurances that the Chief Executive as well as the Philippine government was backing him up in the sugar deal.

IT was further announced by Malacañan on February 7 that the President had reshuffled his Cabinet by appointing Undersecretary of Education Cecilio Putong as Secretary of Education and Economic Coordination Administrator Pablo Lorenzo as Secretary of Public Works, vice Secretary Sotero Baluyut. Pio Pedrosa, general manager of the Manila Railroad Co., was named to succeed Lorenzo as Economic Coordination Administrator.

RAYMOND A. Spruance presented his credential as United States Ambassador to the Philippines to President Quirino in the afternoon of February 7 amidst simple ceremonies at the Malacañan ceremonial hall. Members of the Cabinet and high officials of the Department of Foreign Affairs and the U. S. Embassy were present at the ceremonies. Both President Quirino and Ambassador Spruance pledged their efforts in carrying out the common interests and objectives of the Philippines and the United States, which is the preservation of the heritage common to both countries. (*See* HISTORICAL PAPERS AND DOCUMENTS pp. 511–512, *for texts of the statements of the President and the Ambassador.*)

PRESIDENT Quirino asked Vice-President Lopez during the cabinet meeting on February 8 to find out what became of the ₱3,000,000 which tenants of the Buenavista estate had paid the government shortly before the war and during the Japanese occupation. It was claimed that the huge sum was deposited with the courts but no one seems to know what happened to the money. This was the reason why many tenants of Buenavista who had paid for their lands have not been able to get their land titles.

THE President on February 9 inducted into office Dean Santiago F. de la Cruz of the UE's commerce department, as general manager of the Price Stabilization Corporation, vice Marcelo Eugenio. The President explained that he would not impose further sacrifices on the L. R. Aguinaldo firm by further retaining Eugenio in the PRISCO. The Chief Executive told De la Cruz that his appointment was not only in recognition of his ability but also an invitation to his university to participate in the affairs of the government.

The President, moreover, took further steps to implement the Administration's land-for-the-landless program by authorizing the Director of Lands to cause to be filed in the Lanao Court of First Instance an application for the settlement and adjudication of the titles of a tract of land in Tubod, Lanao, with an area of about 3,126 hectares. According to the Vice President's indorsement, in his capacity as Secretary of Agriculture and Natural Resources, the survey of the said land was executed to help home-seekers find land in which they could settle and for which they may make applications so that they could eventually become the rightful owners of the land. Thus, they would be free from being harassed by unscrupulous persons who have been trying to eject the actual occupants because they claim to be the owners of the different portions of the above-mentioned land.

ON February 10, the President recommended to Congress the extension of the effectivity of four tax measures which are expiring at the end of this year and early next year. These tax measures are the law increasing the rates of individual income tax, the law increasing the rates of corporate income tax, the law increasing the rates of specific tax, and the foreign ex-

change tax law. The President strongly urged Congress to enact legislation extending these acts to June 30, 1954. Failure to extend these laws would mean loss of revenue amounting to ₱215 million.

EXECUTIVE Order No. 492 was signed by the President on February 11, to give exclusive right to the Metropolitan Water District to import aluminum sulphate, chlorine, steel pipes, and cast iron fittings without the need of any kind of license which directly or indirectly limits or controls importation and foreign exchange. The articles to be imported will be used by the MWD solely for the operation of its waterworks and sewage systems.

The President honored U. S. Ambassador Raymond A. Spruance with a luncheon held at Malacañan on that day, where the promotion of mutual understanding and interests between the Philippines and the United States was pledged by the host and the honored guest. The luncheon was attended by high officials of the Philippine government, the Philippine Armed Forces, and the U. S. Army, Navy, and Airforce. Said Ambassador Spruance: "I love the Filipino people and love the country, and I will do all I can to aid the Philippines." In turn, the President said that Ambassador Spruance's record of service in the Orient and elsewhere shows that he will always be a friend of the Filipino people. (*See* HISTORICAL PAPERS AND DOCUMENTS, p. 516, *for full texts of the extemporaneous remarks.*)

THE President signed his budget message early on February 12 and sent it to Congress during its session that day. He said that the figures cited in the budget presents a complete picture of the Philippines' financial structure. The budget presented for the fiscal year ending June 30, 1953, calls for an expenditure of ₱587,231,475 which is ₱544,765 lower than the estimated receipts for the same period which amounts to ₱587,776,240. (*See* pp. 517–521 *for full text of the message.*)

AT the meeting of the Council of State on February 15, the President suggested that the two political parties of the country get together to decide on a national attitude regarding the reparations issue with Japan. The Chief Executive informed the Council of State that the Philippines will send a technical mission to Japan to find out what special services could be availed of from the former enemy country as part of the reparations payment. The President stressed the necessity of continuing with emergency powers given the Chief Executive in order to prepare for any eventuality that may suddenly develop as a result of the current tense international situation.

Speaking from Malacañan over a nationwide radio hookup on the occasion of his 40th monthly fireside chat, in the evening of that day, the President lashed out at his critics in the most comprehensive defense yet of the government's actuation on the controversial sale of sugar to Japan. He deplored "character assassins" for impugning his motives in allowing the exportation of C sugar to Japan. (*See* HISTORICAL PAPERS AND DOCUMENTS, pp. 523–526, *for complete text of the radio chat.*)

PIO Pedrosa's resignation as chairman of the board of directors of the Manila Railroad Company was turned down by the President on February 16. Pedrosa submitted his resignation as head of the government railway firm pending the disposition of the Rovero case by the ways and means committee of the House of Representatives. Pedrosa had authorized the Collector of Customs to constitute a committee of independent appraisers for reappraisal of the value of the confiscated diamonds while the Rovero case was pending in the courts.

The President told Pedrosa in turning down his resignation that his work in the railroad company has nothing to do with the case now pending in the House Ways and Means Committee. However, on Pedrosa's insistent request, the President recalled Pedrosa's nomination as administrator of the Office of Economic Coordination until he is cleared of his case to avoid embarrassing the government.

IN the course of his inspection of the work on the drydocks yard of the National Shipyards and Steel Corporation in Mariveles on February 17, the President remarked that another step in the total economic mobilization program of the government will be realized soon with the expected comple-

tion at the end of this year of the huge drydock plant of the NASSCO in Mariveles. The Chief Executive was satisfied to find that the work on the ₱16 million project of the NASSCO was about 60 per cent completed. The President was accompanied in the inspection trips by Liberal and Nacionalista members of both Houses of Congress who were specially invited so that they could see what the government is doing to execute its industrialization program.

MALACAÑAN announced on February 18 that the President had accepted the resignation of Luis Lichauco as chairman of the board of directors of the Land Settlement and Development Corporation. LASEDECO Manager Felix Maramba had also resigned, and his resignation was accepted recently by the board of directors of the corporation.

THE Cabinet in its meeting on February 19 decided to reduce the prices of lots in the government property in Diliman estate to enable low-income workers to own their land. The reduction, however, is limited only to the 4th and 5th class lots which are sold to low-income employees. Lots classified as fourth class which range in price from ₱5.00 to ₱7.00 will be reduced to from ₱4.50 to ₱5.11 a square meter, and the fifth class lots ranging in price from ₱3.00 to ₱5.00 will be sold from ₱2.19 to ₱4.65 a square meter.

On the same day, the President received on behalf of the Philippine government a ₱1 million check from the alien property office of the U. S. Department of Justice in ceremonies held at Malacañan's council of state room. Stanley Gilbert, manager of the local U. S. alien property office, turned over the check on behalf of the American government. This latest transfer brought to ₱4,550,000 the total cash transfers made to the Philippine government by the U. S. OAP, formerly the PAPA, pursuant to the provisions of the Philippine Property Act of 1946.

Following the ceremonies which took place shortly before noon, the Chief Executive administered the oath of office to former Labor Secretary Marcelo Adduru as general manager of the LASEDECO, vice Felix Maramba, resigned.

PRESIDENT Quirino on February 20 signed Executive Order No. 493, further amending Executive Order No. 178 entitled "Prescribing the procedure, including modes of proof in cases before courts-martial, courts of inquiry, military commissions, and other military tribunals of the Army of the Philippines" as amended by three previous executive orders.

MALACAÑAN announced on February 20 that President Quirino had decided to lay down a policy banning the exportation of sugar to countries outside the United States until the Philippine sugar quota to that country has been filled. The Philippine sugar quota to the United States is 850,000 long tons. The new policy also includes a proposal by the President and approved by the sugarmen that the five per cent of the total sugar crop which the Cabinet had previously earmarked for export to non-American markets to develop new outlets for Philippine sugar will be diverted to the domestic sugar quota in order to increase the supply for local needs in an effort to bring down prices. This decision was reached by the President after a two-hour conference with sugar planters and millers on the one hand and his advisers on the other at the council of state room in Malacañan.

It was also announced by Malacañan that Board Member Anastacio Valencia of the provincial board of Bataan had been suspended indefinitely pending the final determination of the courts of the criminal case of frustrated murder filed against him.

ON February 21, the President directed the Sugar Quota Administration to plug all loopholes whereby sugar for domestic consumption may find its way abroad. This directive was issued because the President was determined to bring down the price of domestic sugar so that this commodity could be brought within the reach of the masses.

THE President on February 23 ordered the fund release committee composed of Secretary of Finance Aurelio Montinola, Auditor General Manuel Agregado, and Budget Commissioner Pio Joven to investigate and report to the President without loss of time the unliquidated cash advances. The President also called his financial assistant and ordered him to explain in 24 hours why his name and those of his family appear among those with outstanding account whereas he had been given the impression that those accounts had already been settled. The President wrote out a check for ₱10,000 and ordered Financial Assistant Casimiro L. Dacanay to settle those accounts at once.

At about 10 o'clock that same day, the President motored to the Funeraria Paz to view the body of the late Felipe Estella, former Manager of the National Development Company who died on February 21. In the afternoon, the President formally opened the fifth annual art exhibit at the showroom of Northern Motors, Inc., on Isaac Peral. The Chief Executive also presented the awards to the prize winners in the contest in painting held in connection with the art exhibit sponsored by the Art Association of the Philippines.

PRESIDENT Quirino was host to about 500 delegates to the national convention of the Catholic Women's League at a tea party held at Malacañan in the afternoon of February 24. The President lauded the spirit behind the stand of the Catholic Women's League of the Philippines against communism and urged that this organization also exert its influence to unite and solidify the country.

THE President on February 25 took up with representatives of the Philippine Chamber of Commerce and the Philippine Chamber of Industries the problem of speeding up the implementation of the industrialization program of the country. In his conference with Antonio de las Alas, PCC president, and Jose P. Marcelo, PCI president, the Chief Executive discussed the practicability of clothing the Office of Economic Coordination with more powers so as to include within its jurisdiction both government and private corporations with the end in view of coordinating their activities to hasten the economic development of the country.

PRESIDENT Quirino on February 25 opened the first meeting of the National Economic Council charged with the study and recommendations of the proposed revisions in the trade relations between the Philippines and the United States. The President urged that the Council make a thorough study of all the changes we would like the United States to know that we should like to be made in the Bell Trade Act. The Council would meet weekly at the council of state room in Malacañan.

AT the Cabinet meeting on February 26, the President signed the deportation order of three wealthy Chinese involved in smuggling strategic materials to Communist China. Those ordered deported were K. H. Pwell Kong, George Kong, and Lee Che Min, alleged to be a former Nationalist general. These three detained in the Bureau of Immigration will be deported to China or Formosa on the first available transportation. The President informed the Cabinet that according to a cablegram from Ambassador Carlos P. Romulo, President Truman had signed that day the papers on military aid to the Philippines. This involves the sum of ₱10 million which the Philippines will use in its campaign against the Huks.

A COMPLETE change in the Import Control Commission membership was made by the President on February 27. He designated Mayor Primitivo Lovina of Pasay as chairman and Railroad Manager Pio Pedrosa and Leon Ancheta, head of the foreign exchange department of the Philippine National Bank, as members. According to Malacañan, the new members of the Commission were merely designated and will continue to hold their present positions in the government.

CONGRESS leaders assured the President at an informal get-together luncheon at Malacañan that day of the solid support and cooperation of Liberal Party members in both Houses of Congress to various administra-

tive measures designed to speed up the government's program of economic development. The President impressed upon LP Senators and Congressmen the necessity of closing ranks for the purpose of carrying out their collective responsibilities to the nation.

In a conference City Mayor Arsenio H. Lacson of Manila had with the President on the same day, the Chief Executive told him to send city squatters to the new workers' barrio *Bago-Bantay* at the hospital site on Highway 54 at Quezon City. The President told Mayor Lacson that the ECA is constructing houses for the laboring class in *Bago-Bantay* to accommodate families who were moved from the slums of Manila in connection with the President's program of slum clearance. Mayor Lacson conferred with the President on the problem of moving squatters from city property, and the President told the mayor to go ahead with his plan about squatters.

THE President called a meeting at Malacañan on February 28 of the Fund Release Committee to determine the nature and extent of the reported unliquidated accounts of the government recently publicized. He asked the Committee to render a report without loss of time. He gave instructions that all existing laws, rules, and regulations affecting prompt settlement of accounts, particularly disbursing funds, accounts receivable, and accounts payable be enforced strictly and any official or employee who may be found guilty of delay in the liquidation of accounts be dealt with administratively or criminally as the facts may warrant upon receipt of the recommendation of the Auditor General.

On the same day, the President swore into office the new members of the Import Control Commission, namely Pasay City Mayor Primitivo Lovina, as chairman, and Railroad Manager Pio Pedrosa and Leon Ancheta of the PNB foreign exchange department, as members.

IN a letter to President Quirino which was sent on February 29 through the U. S. Embassy in Manila, President Harry S. Truman paid high tribute to the Philippine President's determination to align the new Republic once and for all among democratic nations of the world. President Truman wrote the letter to congratulate President Quirino on the "statesmanlike message which you delivered to the Congress of the Philippines on January 28th last." President Truman added: "It is a message at once brave, courageous and clear in vision."

The President on the same day decided to nominate Justice Alejo Labrador, Presiding Justice of the Court of Appeals, to membership in the Supreme Court. Labrador's successor will be considered after his confirmation by the Commission on Appointments, Malacañan announced. Malacañan also announced the appointment to the PRISCO board of Augusto Espiritu, former member of the Import Control Commission.

Malacañan announced on the same day that the President had asked Congress to extend the laws on export control and price control which expire at the termination of the present session of Congress and on June 30, 1952, respectively. The President said in his message that in the interest of the national economy and security the control on export of critical materials should continue.

EXECUTIVE ORDERS, PROCLAMATIONS AND ADMINISTRATIVE ORDERS

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER No. 489

PROHIBITING THE COLLECTION BY PRIVATE INDIVIDUALS OR ENTITIES OF ABANDONED SCRAP METALS AND DESIGNATING THE NATIONAL SHIPYARDS AND STEEL CORPORATION AS THE SOLE GOVERNMENTAL AGENCY TO COLLECT THE SAME.

By virtue of the powers vested in me by law, I, Elpidio Quirino, President of the Philippines, do hereby prohibit the collection by private individuals or entities of scrap metals abandoned in public places or in private properties, the ownership of which scrap is not established.

The National Shipyards and Steel Corporation (NASSCO) is hereby designated as the sole governmental agency to assume the responsibility of collecting scrap metals abandoned on land throughout the country. The NASSCO shall devise ways and means of effecting the collection of abandoned scrap metals in the provinces and chartered cities through arrangements with provincial, city and municipal officials who shall be responsible to the NASSCO for the collection and custody thereof.

The NASSCO shall report periodically to the President of the Philippines on the progress of the collection of abandoned scrap metals, submitting inventories of collections made.

Executive Order No. 58, dated June 9, 1947, as amended by Executive Order No. 412, dated February 10, 1951, is hereby further amended accordingly.

Done in the City of Manila, this 2nd day of February, in the year of our Lord, nineteen hundred and fifty-two, and of the Independence of the Philippines, the sixth.

ELPIDIO QUIRINO
President of the Philippines

By the President:

MARCIANO ROQUE
Acting Executive Secretary

26571

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 490

ORGANIZING A CERTAIN PORTION OF THE MUNICIPALITY OF TALISAYAN, PROVINCE OF MISAMIS ORIENTAL, INTO AN INDEPENDENT MUNICIPALITY UNDER THE NAME OF BALINGOAN.

Upon the recommendation of the Provincial Board of Misamis Oriental and pursuant to the provisions of section sixty-eight of the Revised Administrative Code, there is hereby organized in the Province of Misamis Oriental, a municipality to be known as the municipality of Balingoan which shall consist of the western part of the municipality of Talisayan and more particularly bounded as follows:

On the North, by the Mindanao Sea; on the east, by a straight line from the center of the mouth of Mantangale Creek running S. 20° 00′ E., approximately 15,000 meters, to the common point of contact in the boundary lines of the municipalities of Medina, Claveria, and Talisayan; on the south, by the municipality of Claveria; and on the west, by the municipality of Kinoguitan. (Reference used: Map of the municipality of Talisayan, scale 1:20,000 prepared and submitted by Acting District Engineer Gil C. Lerias of Misamis Oriental.)

The municipality of Balingoan, as herein organized, contains the following barrios: Balingoan, which shall be the seat of the municipal government, Mapua, and Cataringan.

The municipality of Talisayan shall have its present territory minus the portion thereof included in the municipality of Balingoan.

The municipality of Balingoan shall begin to exist upon the appointment and qualification of the mayor, vice-mayor and a majority of the councilors thereof.

Done in the City of Manila, this 2nd day of February, in the year of Our Lord, nineteen hundred and fifty-two, and of the Independence of the Philippines, the sixth.

ELPIDIO QUIRINO
President of the Philippines

By the President:

MARCIANO ROQUE
Acting Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 491

FURTHER AMENDING EXECUTIVE ORDER NO. 24, DATED NOVEMBER 12, 1946, AS AMENDED, ENTITLED "CREATING THE NATIONAL ADVISORY HEALTH COUNCIL."

The second paragraph of Executive Order No. 24, dated November 12, 1946, as amended, is hereby further amended so as to make the President of the Philippines Mental Health Association a member of the National Advisory Health Council therein created.

Done in the City of Manila, this 6th day of February, in the year of Our Lord, nineteen hundred and fifty-two and of the Independence of the Philippines, the sixth.

ELPIDIO QUIRINO
President of the Philippines

By the President:

MARCIANO ROQUE
Acting Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 492

DIRECTING THE IMPORTATION BY THE METROPOLITAN WATER DISTRICT EXCLUSIVELY OF ALUMINUM SULPHATE, CHLORINE, STEEL PIPES AND CAST IRON FITTINGS WITHOUT THE NEED OF ANY KIND OF LICENSE WHICH DIRECTLY OR INDIRECTLY LIMITS OR CONTROLS IMPORTATION AND FOREIGN EXCHANGE.

Pursuant to the power vested in me by section 1 of Republic Act No. 650, and the public welfare so demanding, I, Elpidio Quirino, President of the Philippines, do hereby direct the importation by the Metropolitan Water District exclusively of aluminum sulphate, chlorine, steel pipes, and cast iron fittings without the need of any kind of license which directly or indirectly limits or controls importation and foreign exchange. It is understood that the aforesaid articles shall be used by the said corporation solely for the operation of its waterworks and sewage systems.

Done in the City of Manila, this 8th day of February, in the year of Our Lord, nineteen hundred and fifty-two, and of the Independence of the Philippines, the sixth.

ELPIDIO QUIRINO
President of the Philippines

By the President:

MARCIANO ROQUE
Acting Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 493

FURTHER AMENDING SECTION 5–*a* OF CHAPTER III OF EXECUTIVE ORDER NO. 178, DATED DECEMBER 17, 1938, ENTITLED "PRESCRIBING THE PROCEDURE, INCLUDING THE MODES OF PROOF, IN CASES BEFORE COURTS-MARTIAL, COURTS OF INQUIRY, MILITARY COMMISSIONS, AND OTHER MILITARY TRIBUNALS OF THE ARMY OF THE PHILIPPINES" AS AMENDED BY EXECUTIVE ORDER NO. 47, DATED JUNE 6, 1945, EXECUTIVE ORDER NO. 264, DATED SEPTEMBER 8, 1949, AND EXECUTIVE ORDER NO. 414, DATED FEBRUARY 16, 1951.

Paragraph 2 of section 5–*a* of Chapter III of Executive Order No. 178, dated December 17, 1938, as amended by Executive Order No. 47, dated June 6, 1945, Executive Order No. 264, dated September 8, 1949, and Executive Order No. 414, dated February 6, 1951, is hereby further amended to read as follows:

"Under the authority of AW 8, as amended by Republic Acts Nos. 242 and 516, the Commanding Officer of a major command or task force, the Commanding Officer of a Division, the Commanding Officer of the Philippine Army Training Command, the Commanding Officer of a Military Area, the Superintendent of the Philippine Military Academy (except for the trial of an officer), and the Commanding Officer of a battalion or a larger unit, or corresponding units of the Air Force and the Navy, assigned for duty in a territory beyond the jurisdiction of the Philippines, are hereby empowered to appoint general courtsmartial."

Done in the City of Manila, this 20th day of February, in the year of Our Lord, nineteen hundred and fifty-two, and of the Independence of the Philippines, the sixth.

ELPIDIO QUIRINO
President of the Philippines

By the President:

MARCIANO ROQUE
Acting Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER No. 175–A

REPRIMANDING LT. COL. ANDRES O. CRUZ AND DISMISSING THE CHARGES AGAINST LT. COL. VICTOR H. DIZON, ACTING ADMINISTRATOR AND ACTING DEPUTY ADMINISTRATOR RESPECTIVELY, OF THE CIVIL AERONAUTICS ADMINISTRATION.

This is an administrative case against Lt. Cols. Andres O. Cruz and Victor H. Dizon, acting administrator and acting deputy administrator, respectively, of the Civil Aeronautics Administration, brought by Eliodoro de la Rosa, general counsel of the same office, charging the first with gross misconduct in office, grave abuse of authority, active political participation and unlawful use of government vehicle and the second with complicity (with the other respondent) in coercing the complainant to resign and indifference towards the complainant when his co-respondent attached the former and engaged him in a physical encounter. The charges were investigated by the Integrity Board which found those against Dizon not substantiated but found Cruz guilty of gross misconduct and political activity.

It appears that for some time prior to January 9, 1951, there was a movement, of which respondent Cruz was aware, to secure the appointment of civilians to manage the Civil Aeronautics Administration then being run by military men. The personnel thereof was divided into two factions, one for maintaining the status quo and the other favoring the change. Complainant, who was apparently interested in the post of administrator, was identified with the latter group. A couple of meetings of officials and employees were called by respondent Cruz to sound out, among other things, their preference as to who among the respondents and complainant should run the office. In the meeting held on the afternoon of January 9, 1951, Cruz suggested to complainant to go on leave in order that he could work for his candidacy as administrator.

Acting on the suggestion, complainant submitted the next day an application for one month's vacation leave which was forthwith endorsed by respondent Cruz. Upon learning, however, that complainant had more leave to his credit, Cruz insisted that the former exhaust all his leave on condition that he submit his resignation to take effect at the expiration of his leave. Complainant refused to comply with the condition, invoking his rights as a class-

ified civil service officer. Whereupon Cruz tore the application and, after an exchange of hot words, stood up and boxed complainant on the mouth. They grappled but were separated by some employees. Complainant left the room and went to his desk but was followed by Cruz who persisted in further laying hands on him. Efforts of cooler heads to prevent him from so doing proved to no avail. When finally they were separated, complainant, who was the smaller of the two, emerged with several injuries which required medical attention.

It also appears that in violation of existing law and regulations respondent Cruz aided a candidate for congressman in the Province of Bohol in the 1949 elections by contributing to the latter's campaign fund and asking his subordinates to do the same, which they did.

Aside from the violation of law and regulations already stated, it is evident that respondent Cruz is guilty of conduct unbecoming a public officer. It is indeed regrettable that one in his high position and who, as head of the office, albeit in a temporary capacity, was expected to observe more self-restraint, should be the first one to lose his equanimity and resort to violence, thereby creating a scene in the office and disrupting the work therein.

Wherefore, and in accordance with the recommendation of the Integrity Board, Lt. Col. Andres O. Cruz is hereby reprimanded and relieved of his duties as acting administrator of the Civil Aeronautics Administration and returned to active duty in the armed forces, while the charges against Lt. Col. Victor H. Dizon are hereby dismissed.

Considering the role played in the unhappy incident by complainant Eliodoro de la Rosa who, to foster his ambition of becoming administrator of the Civil Aeronautics Administration, was practically the moving spirit in the agitation for a change in the management of said office, I agree with the Integrity Board that it is in the interest of the public service that said Eliodoro de la Rosa be taken away from the Civil Aeronautics Administration and transferred to another branch or office of the Government. The Secretary of Commerce and Industry and the Commissioner of Civil Service are accordingly directed to find ways and means of effecting such transfer.

Done in the City of Manila, this 12th day of December, in the year of our Lord, nineteen hundred and fifty-one and of the Independence of the Philippines, the sixth.

ELPIDIO QUIRINO
President of the Philippines

By the President:

MARCIANO ROQUE
Acting Assistant Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 178

DIRECTING THE HEADS OF DEPARTMENTS AND CHIEFS OF BUREAUS AND OFFICES NOT TO INCUR EXPENDITURES BEYOND THE APPROPRIATIONS AUTHORIZED BY LAW FOR THEIR RESPECTIVE DEPARTMENTS, BUREAUS OR OFFICES AND PRESCRIBING PROCEDURE TO AVOID OVERDRAFTS.

WHEREAS, during the past years some administrative officials have authorized or countenanced the incurrence of expenditures beyond the amounts appropriated by law for their respective departments, bureaus or offices, thereby necessitating the submission to Congress of requests for deficiency appropriations; and

WHEREAS, the Constitution provides that "no money shall be paid out of the Treasury except in pursuance of an appropriation made by law";

NOW, THEREFORE, I, Elpidio Quirino, President of the Philippines, by virtue of the powers vested in me by law, do hereby order and direct all heads of Departments, chiefs of bureaus and offices and other administrative officials concerned not to incur or authorize the incurrence of expenditures in excess of the amounts appropriated by law for their respective departments, bureaus or offices. Parties responsible for the incurrence of overdrafts shall be held personally liable therefor.

To prevent the incurrence of deficits, all heads of departments, and chiefs of bureaus and offices shall submit to the Office of the President, through the Commissioner of the Budget, on or before August 1st of every year a statement of the quarterly allotments of each item of appropriation for their departments, bureaus or offices. The allotments must take into account the fluctuation of expenditures due to seasonal and other causes. Unless due to unavoidable circumstances, expenditures during each quarter must be limited to the allotments for each item. The excess of expenditures over the quarterly allotments shall be covered by reduction of expenditures for succeeding quarters.

On or before the last day of the next month following every quarter, except the last, the heads of departments, and chiefs of bureaus and offices shall submit to the Budget Commission, for consolidation and submission to the Office of the President, a quarterly report of expenditures, showing the increase or decrease of the expend-

itures, as compared with the allotment. In case expenditures have exceeded the allotments by more than 10 per cent, the reasons for such increase should be given as well as the steps to be taken to keep the total of the yearly expenditures within the appropriation.

The Commissioner of the Budget shall watch carefully the trend of income and expenditures. Whenever the income shows a tendency to drop below the estimates to such a level that a deficit in funds may result, the Commissioner of the Budget shall recommend to the President such curtailment of expenditures as may be necessary to keep the expenditures within the actual income.

The Budget Commission shall implement the provisions of this Administrative Order and prescribe the necessary forms therefor.

Done in the City of Manila, this 6th day of February, in the year of Our Lord, nineteen hundred and fifty-two, and of the Independence of the Philippines, the sixth.

ELPIDIO QUIRINO
President of the Philippines

By the President:

MARCIANO ROQUE
Acting Executive Secretary

DEPARTMENT AND BUREAU ADMINISTRATIVE ORDERS AND REGULATIONS

Executive Office

OFFICE OF THE PRESIDENT OF THE PHILIPPINES
MANILA

PROVINCIAL CIRCULAR (Unnumbered)

February 2, 1952

URGENT TRIPS TO MANILA AND CONFERENCE DAY WITH THE PRESIDENT OF PROVINCIAL, CITY AND MUNICIPAL OFFICIALS.

To all Provincial Governors and City Mayors:

In consonance with the policy of His Excellency, the President, of giving an opportunity to local government officials to see him on matters of administration and problems connected therewith, he has directed me to inform you that henceforth Friday of each week is being reserved for appointment with provincial, city and municipal mayors, unless he sends for any of them for a special purpose on other days.

As observance of this arrangement as a rule will result in the convenience of all concerned and the saving of unnecessary expense for overstay in Manila, it will be appreciated if all those concerned having important business to take up with the President will arrange for their trip so as to arrive in Manila on Thursday evening or early Friday morning. They may elect to stay until the weekend, if they have other matters of importance to take up with other officials of the national government.

Notwithstanding the foregoing arrangement, however, attention is invited to the fact that as a matter of national policy, this Office considers valid and subsisting the provisions of several Provincial Circulars issued in the past by the former Department of the Interior, restricting trips to Manila of provincial, city and municipal officials and employees to strictly urgent purposes as defined in Executive Order No. 78, series of 1945, and urging said officials to stay in their respective stations and especially so if peace and order conditions therein would not warrant their absence therefrom. These directives apply more particularly to subordinate officials and employees in the local governments who come to Manila for purposes which could have been accomplished at less expense in time and money by letter or telegram.

This circular therefore does not constitute nor should it be construed as a blanket authority for local officials to come to Manila without previous permission of this office as required by standing rules and regulations on the matter.

Compliance with the intents and purpose of this circular by all those concerned will be appreciated.

MARCIANO ROQUE
Acting Executive Secretary

Department of Finance

BUREAU OF INTERNAL REVENUE

REVENUE REGULATIONS NO. V-23

January 25, 1952

AMENDMENT TO SECTION 8 OF REGULATIONS NO. 27

To all Internal-Revenue Officers and others concerned:

Pursuant to the provisions of section 338, in relation to section 4 of Commonwealth Act No. 466, otherwise known as the National Internal Revenue Code, the following regulations amending section 8 of Regulations No. 27, are hereby promulgated and shall be known as Revenue Regulations No. V-23.

SECTION 1. Section 8 of Regulations No. 27 of the Department of Finance is hereby amended by adding a new section to be known as section 8½ and to read as follows:

"SEC. 8½. *Branding of cigarettes.*—All cigarettes manufactured for sale by registered cigarette manufacturers shall bear the name or brand registered and approved by the Collector of Internal Revenue. The branding shall be done by steel dies or by any metal device attached to the cigarette making machine. The branding of the registered name by rubber stamp or by any similar device on the cigarettes shall not be considered sufficient compliance with this requirement of the regulations."

SEC. 2. *Penalty.*—Any violation of these regulations shall be penalized under section 352 of the National Internal Revenue Code.

SEC. 3. *Effectivity.*—These regulations shall take effect upon publication in the *Official Gazette.*

AURELIO MONTINOLA
Secretary of Finance

Recommended by:

S. DAVID
Collector of Internal Revenue

BUREAU OF INTERNAL REVENUE

REVENUE REGULATIONS NO. V-24

February 18, 1952

INTERNAL REVENUE INSPECTION DISTRICTS

To all Internal Revenue Officers and others concerned:

1. The interest of the revenue service so requiring, the Philippines is hereby divided into the following 54 inspection districts each under the supervision of the provincial treasurer as chief internal revenue officer and the provincial revenue agent as his executive officer, the latter will take charge of the investigation and disposition of all internal revenue matters of the district, with the exception of inspection districts Nos. 52, 53, and 54 which are considered as special districts under the supervision of a city revenue agent, a supervisor of distilleries, and a supervisor of tobacco factories, respectively, to wit:

Inspection District No. 1.—Comprising the Province of Abra with Bangued, Abra, as station town of the provincial revenue agent;

Inspection District No. 2.—Comprising the Province of Agusan and the City of Butuan with Butuan City, as station town of the provincial revenue agent;

Inspection District No. 3.—Comprising the Province of Albay and the City of Legaspi with Legaspi City, as station town of the provincial revenue agent;

Inspection District No. 4.—Comprising the Province of Antique with San Jose, Antique, as station town of the provincial revenue agent;

Inspection District No. 5.—Comprising the Province of Bataan with Balanga, Bataan, as station town of the provincial revenue agent;

Inspection District No. 6.—Comprising the Province of Batanes with Basco, Batanes, as station town of the provincial revenue agent;

Inspection District No. 7.—Comprising the Province of Batangas and the City of Lipa with Batangas, Batangas, as station town of the provincial revenue agent;

Inspection District No. 8.—Comprising the Province of Bohol with Tagbilaran, Bohol, as station town of the provincial revenue agent;

Inspection District No. 9.—Comprising the Province of Bukidnon with Malaybalay, Bukidnon, as station town of the provincial revenue agent;

Inspection District No. 10.—Comprising the Province of Bulacan with Malolos, Bulacan, as station town of the provincial revenue agent;

Inspection District No. 11.—Comprising the Province of Cagayan with Tuguegarao, Cagayan, as station town of the provincial revenue agent;

Inspection District No. 12.—Comprising the Province of Camarines Norte with Daet, Camarines Norte, as station town of the provincial revenue agent;

Inspection District No. 13.—Comprising the Province of Camarines Sur and the City of Naga with Naga City, as station town of the provincial revenue agent;

Inspection District No. 14.—Comprising the Province of Capiz and the City of Roxas with Roxas City, as station town of the provincial revenue agent;

Inspection District No. 15.—Comprising the Province of Catanduanes with Virac, Catanduanes, as station town of the provincial revenue agent;

Inspection District No. 16.—Comprising the Province of Cavite and the Cities of Cavite and Tagaytay with Cavite City, as station town of the provincial revenue agent;

Inspection District No. 17.—Comprising the Province of Cebu and the City of Cebu with Cebu City, as station town of the provincial revenue agent;

Inspection District No. 18.—Comprising the Province of Cotabato with Cotabato, Cotabato, as station town of the provincial revenue agent;

Inspection District No. 19.—Comprising the Province of Davao and the City of Davao with Davao City, as station town of the provincial revenue agent;

Inspection District No. 20.—Comprising the Province of Ilocos Norte with Laoag, Ilocos Norte, as station town of the provincial revenue agent;

Inspection District No. 21.—Comprising the Province of Ilocos Sur with Vigan, Ilocos Sur, as station town of the provincial revenue agent;

Inspection District No. 22.—Comprising the Province of Iloilo and the City of Iloilo with Iloilo City, as station town of the provincial revenue agent;

Inspection District No. 23.—Comprising the Province of Isabela with Ilagan, Isabela, as station town of the provincial revenue agent;

Inspection District No. 24.—Comprising the Province of Laguna and the City of San Pablo with San Pablo City, as station town of the provincial revenue agent;

Inspection District No. 25.—Comprising the Province of Lanao and the cities of Dansalan and Iligan with Iligan City, as station town of the provincial revenue agent;

Inspection District No. 26.—Comprising the Province of La Union with San Fernando, La Union, as station town of the provincial revenue agent;

Inspection District No. 27.—Comprising the Province of Leyte and the City of Ormoc with Tacloban, Leyte, as station town of the provincial revenue agent;

Inspection District No. 28.—Comprising the Province of Marinduque with Boac, Marinduque, as station town of the provincial revenue agent;

Inspection District No. 29.—Comprising the Province of Masbate with Masbate, Masbate, as station town of the provincial agent;

Inspection District No. 30.—Comprising the Province of Mindoro Occidental with Mamburao, Mindoro Occidental, as station town of the provincial revenue agent;

Inspection District No. 31.—Comprising the Province of Mindoro Oriental with Calapan, Mindoro Oriental, as station town of the provincial revenue agent;

Inspection District No. 32.—Comprising the Province of Misamis Occidental and the City of Ozamiz with Ozamiz City, as station town of the provincial revenue agent;

Inspection District No. 33.—Comprising the Province of Misamis Oriental and the City of Cagayan de Oro with Cagayan de Oro City, as station town of the provincial revenue agent;

Inspection District No. 34.—Comprising the Mountain Province and the City of Baguio with Baguio City, as station town of the provincial revenue agent;

Inspection District No. 35.—Comprising the Province of Negros Occidental and the City of Bacolod with Bacolod City, as station town of the provincial revenue agent;

Inspection District No. 36.—Comprising the Province of Negros Oriental, the sub-province of Siquijor and the City of Dumaguete with Dumaguete City, as station town of the provincial revenue agent;

Inspection District No. 37.—Comprising the Province of Nueva Ecija and the City of Cabanatuan with Cabanatuan City, as station town of the provincial revenue agent;

Inspection District No. 38.—Comprising the Province of Nueva Vizcaya with Bayombong, Nueva Vizcaya, as station town of the provincial revenue agent;

Inspection District No. 39—Comprising the Province of Palawan with Puerto Princesa, Palawan, as station town of the provincial revenue agent;

Inspection District No. 40.—Comprising the Province of Pampanga with San Fernando, Pampanga, as station town of the provincial revenue agent;

Inspection District No. 41.—Comprising the Province of Pangasinan and the City of Dagupan with Dagupan City, as station town of the provincial revenue agent;

Inspection District No. 42.—Comprising the Province of Quezon and the sub-province of Aurora with Lucena, Quezon, as station town of the provincial revenue agent;

Inspection District No. 43.—Comprising the Province of Rizal (with the exception of the municipalities of Las Piñas, Parañaque, Makati, Mandaluyong, San Juan, Caloocan, Malabon, and Navotas), with Pasig, Rizal, as station town of the provincial revenue agent;

Inspection District No. 44.—Comprising the Province of Romblon with Odiongan, Romblon, as station town of the provincial revenue agent;

Inspection District No. 45.—Comprising the Province of Samar and the City of Calbayog, with Catbalogon, Samar, as station town of the provincial revenue agent;

Inspection District No. 46.—Comprising the Province of Sorsogon with Sorsogon, Sorsogon, as station town of the provincial revenue agent;

Inspection District No. 47.—Comprising the Province of Sulu with Jolo, Sulu, as station town of the provincial revenue agent;

Inspection District No. 48.—Comprising the Province of Surigao with Surigao, Surigao, as station town of the provincial revenue agent;

Inspection District No. 49.—Comprising the Province of Tarlac with Tarlac, Tarlac, as station town of the provincial revenue agent;

Inspection District No. 50.—Comprising the Province of Zambales with Iba, Zambales, as station town of the provincial revenue agent;

Inspection District No. 51.—Comprising the Province of Zamboanga and the Cities of Zamboanga and Basilan with Zamboanga City, as station town of the provincial revenue agent;

Inspection District No. 52.—Comprising the Cities of Manila, Quezon, and Pasay and the municipalities of Las Piñas, Parañaque, Makati, Mandaluyong, San Juan, Caloocan, Malabon, and Navotas, with Manila, as station town of the city revenue agent;

Inspection District No. 53.—Comprising all the municipalities in the Provinces of Rizal, Cavite, and Bulacan, and the Cities of Manila, Quezon, Pasay, Cavite, and Tagaytay, where breweries, and distilling, rectifying, compounding, and repacking establishments are located, with Manila, as station town of the supervisor of distilleries; and

Inspection District No. 54.—Comprising all the municipalities in the Provinces of Rizal, Cavite, and Bulacan, and the Cities of Manila, Quezon, Pasay, Cavite, and Tagaytay where cigar, cigarette, and tobacco factories are established, with Manila, as station town of the supervisor of tobacco factories.

2. The treasurers of the Cities of Bacolod, Baguio, Basilan, Butuan, Cabanatuan, Cagayan de Oro, Calbayeg, Cavite, Cebu, Dagupan, Dansalan, Davao, Dumaguete, Iligan, Iloilo, Legaspi, Lipa, Naga, Ormoc, Ozamiz, Pasay, Quezon, Roxas, San Pablo, Tagaytay, and Zamboanga shall act as chief internal revenue officers in their respective cities but for purposes of the enforcement of the Internal Revenue Laws and Regulations they are hereby placed under the immediate supervision and control of the provincial treasurers of the provinces where the cities are located.

3. Revenue Regulations Nos. V-2 and V-5 and all regulations issued by the Department of Finance

insofar as they are inconsistent with the provisions hereof are hereby repealed.

These regulations shall take effect upon promulgation in the *Official Gazette.*

AURELIO MONTINOLA
Secretary of Finance

Recommended by:

S. DAVID
Collector of Internal Revenue

Department of Justice

ADMINISTRATIVE ORDER NO. 18

February 3, 1952

DETAILING ASSISTANT PROVINCIAL FISCAL HONORATO BAUTISTA OF LANAO TO MISAMIS ORIENTAL AS ASSISTANT PROVINCIAL FISCAL THEREIN.

In the interest of the public service and pursuant to the provisions of section 1680 of the Revised Administrative Code, Mr. Honorato Bautista, Assistant Provincial Fiscal of Lanao, is hereby detailed to the Province of Misamis Oriental, there to perform the duties of assistant provincial fiscal, effective immediately and to continue until further orders.

OSCAR CASTELO
Secretary of Justice

ADMINISTRATIVE ORDER NO. 19

February 5, 1952

TEMPORARILY DETAILING ASSISTANT PROVINCIAL FISCAL DOMINADOR B. PEDRO OF ILOCOS NORTE TO ISABELA AS ASSISTANT PROVINCIAL FISCAL THEREIN.

In the interest of the public service and pursuant to the provisions of section 1680 of the Revised Administrative Code, Mr. Dominador B. Pedro, Assistant Provincial Fiscal of Ilocos Norte, is hereby temporarily detailed to the Province of Isabela, there to discharge the duties of assistant provincial fiscal, effective immediately and to continue until further orders.

OSCAR CASTELO
Secretary of Justice

ADMINISTRATIVE ORDER NO. 20

February 8, 1952

AUTHORIZING JUDGE-AT-LARGE VICENTE ARGUELLES TO HOLD COURT IN CEBU TO TRY AN ELECTORAL CASE.

In the interest of the administration of justice and pursuant to the provisions of section 56 of Republic Act No. 296, the Honorable Vicente Arguelles, Judge-at-large, is hereby authorized to hold court in the Province of Cebu, as soon as possible, for the purpose of trying electoral protest entitled "Cuenco *vs.* Osmeña" and other cases, and to enter judgments therein.

OSCAR CASTELO
Secretary of Justice

ADMINISTRATIVE ORDER NO. 21

February 5, 1952

GRANTING LEAVE OF ABSENCE WITHOUT PAY TO MUNICIPAL JUDGE AGUSTIN ANTILLON OF CAGAYAN THE ORO CITY AND DESIGNATING MR. DOFIDO MARBAN AS ACTING MUNICIPAL JUDGE THEREIN.

Upon petition of Mr. Agustin Antillon, Municipal Judge of Cagayan de Oro City, he is hereby granted leave of absence without pay effective February 16, 1952; pursuant to section 76, second paragraph, of Republic Act No. 521, otherwise known as the Charter of the City of Cagayan de Oro, Mr. Dofido Marban, Justice of the peace of Alubijid, is hereby designated acting municipal judge of said city beginning February 16, 1952 and to continue only until the return to duty of the regular incumbent.

OSCAR CASTELO
Secretary of Justice

ADMINISTRATIVE ORDER NO. 22

February 13, 1952

AUTHORIZING CADASTRAL JUDGE FILOMENO IBAÑEZ TO HOLD COURT IN PALAWAN

In the interest of the administration of justice and pursuant to the provisions of section 56 of Republic Act No. 296, the Honorable Filomeno Ybañez, Cadastral Judge, is hereby authorized to hold court in the Province of Palawan, beginning the first Monday of March, 1952, for the purpose of trying all kinds of cases and to enter judgments therein.

OSCAR CASTELO
Secretary of Justice

ADMINISTRATIVE ORDER NO. 23

February 13, 1952

AUTHORIZING CADASTRAL JUDGE JOSE P. FLORES TO HOLD COURT IN MOUNTAIN PROVINCE

In the interest of the administration of justice and pursuant to the provisions of section 56 of Republic Act No. 296, the Honorable Jose P. Flores, Cadastral Judge, is hereby authorized to hold court in Mountain Province, during the months of March and June, 1952, for the purpose of trying all kinds of cases and to enter judgments therein.

OSCAR CASTELO
Secretary of Justice

ADMINISTRATIVE ORDER No. 24

February 16, 1952

AUTHORIZING JUDGE PASCUAL SANTOS TO HOLD COURT IN ROMBLON

In the interest of the administration of justice and pursuant to the provisions of section 56 of Republic Act No. 296, the Honorable Pascual Santos, Judge of the Tenth Judicial District, Masbate and Romblon, is hereby authorized to hold court in the Province of Romblon, during the month of March, 1952, for the purpose of trying all kinds of cases and to enter judgments therein.

OSCAR CASTELO
Secretary of Justice

ADMINISTRATIVE ORDER No. 25

February 16, 1952

AUTHORIZING CADASTRAL JUDGE JOSE BONTO TO HOLD COURT IN SAN JOSE, NUEVA ECIJA

In the interest of the administration of justice and pursuant to the provisions of section 56 of Republic Act No. 296, the Honorable Jose Bonto, Cadastral Judge, is hereby authorized to hold court in the municipality of San Jose, Province of Nueva Ecija, on February 18, 19, 20, 26, and 27, 1952, for the purpose of trying Election Protest No. 850 entitled, "Pastor V. Domingo *vs.* Alfredo Briones" and to enter judgment therein.

OSCAR CASTELO
Secretary of Justice

ADMINISTRATIVE ORDER No. 26

February 14, 1952

APPOINTING TEMPORARILY CABANATUAN CITY ATTORNEY LEON AQUINO AS ACTING PROVINCIAL FISCAL OF NUEVA ECIJA.

In the interest of the public service and pursuant to the provisions of section 1679 of the Revised Administrative Code, Mr. Leon Aquino, City Attorney of Cabanatuan City, is hereby temporarily appointed, in addition to his regular duties. Acting Provincial Fiscal of Nueva Ecija, effective immediately and to continue during the absence on temporary detail to the Department of Justice of the regular Provincial Fiscal thereof.

OSCAR CASTELO
Secretary of Justice

ADMINISTRATIVE ORDER No. 27

February 19, 1952

AUTHORIZING CADASTRAL JUDGE LUIS N. DE LEON TO DECIDE CERTAIN CASES IN KALIBO, CAPIZ

In the interest of the administration of justice, the Honorable Luis N. de Leon, Cadastral Judge, is hereby authorized to decide in Kalibo, Capiz, the following cases which were previously tried by him while holding court in Dipolog, Zamboanga:

1. Civil Case No. 94—"Leoncia Baguinat et al., *vs.* Leon Jardin," for recovery of real property and damages; and
2. Civil Case No. 101—"Leon Jardin *vs.* Luis Vallecer" for despojo y detentacion."

OSCAR CASTELO
Secretary of Justice

ADMINISTRATIVE ORDER No. 28

February 19, 1952

AUTHORIZING CADASTRAL JUDGE MANUEL P. BARCELONA TO HOLD COURT IN QUEZON CITY

In the interest of the administration of justice and pursuant to the provisions of section 56 of Republic Act No. 296, the Honorable Manuel P. Barcelona, Judge-at-Large, is hereby authorized to hold court in Quezon City, beginning February 21, 1952, for the purpose of trying all kinds of cases and to enter judgments therein.

OSCAR CASTELO
Secretary of Justice

ADMINISTRATIVE ORDER No. 29

February 20, 1952

DESIGNATING SULU PROVINCIAL FISCAL NATALIO P. AMARGA TO ASSIST THE PROVINCIAL FISCALS OF LANAO, MISAMIS ORIENTAL, AGUSAN, AND SURIGAO AND THE CITY ATTORNEYS OF CAGAYAN DE ORO AND BUTUAN.

In the interest of the public service and pursuant to the provisions of section 1686 of the Revised Administrative Code, Mr. Natalio P. Amarga, Provincial Fiscal of Sulu, is hereby designated to assist the Provincial Fiscals of Lanao, Misamis Oriental, Bukidnon, Agusan, and Surigao and the City Attorneys of Cagayan de Oro and Butuan Cities in the discharge of their duties, effective immediately and to continue until further orders.

This amends Administrative Order No. 110, dated June 12, 1951, of this Department.

OSCAR CASTELO
Secretary of Justice

ADMINISTRATIVE ORDER No. 30

February 21, 1952

DESIGNATING SPECIAL COUNSEL MRS. AIDA-GIL DAMASO TO ASSIST THE ATTORNEY OF DAVAO CITY IN THE INVESTIGATION AND PROSECUTION OF CRIMINAL CASES.

In the interest of the public service and pursuant to the provisions of section 1686 of the Revised Administrative Code, Mrs. Aida-Gil Damaso,

Special Counsel of the Province of Davao, is hereby designated to assist the City Attorney of Davao City in the investigation and prosecution of criminal cases arising from said City and triable in the Municipal Court and Court of First Instance of Davao City, effective immediately and to continue until further orders.

OSCAR CASTELO
Secretary of Justice

ADMINISTRATIVE ORDER NO. 31

February 21, 1952

DESIGNATING JUSTICE OF THE PEACE OF CLARIN RUFINO GALINDO TO ACT TEMPORARILY AS MUNICIPAL JUDGE OF OZAMIZ CITY.

In the interest of the public service and pursuant to section 75 of Republic Act 321, Mr. Rufino Galindo, Justice of the Peace of Clarin, Misamis Occidental, is hereby designated to act temporarily as Municipal Judge of Osamiz City beginning February 18, 1952 and to continue only during the absence of Mr. Santiago Catane, the regular incumbent, who has been granted leave of absence beginning said date.

OSCAR CASTELO
Secretary of Justice

ADMINISTRATIVE ORDER NO. 32

February 23, 1952

AUTHORIZING JUDGE EMILIO BENITEZ TO HOLD COURT IN GUIUAN, SAMAR

In the interest of the administration of justice and pursuant to the provisions of section 56 of Republic Act No. 296, the Honorable Emilio Benitez, Judge of the Thirteenth Judicial District, Samar, Second Branch, is hereby authorized to hold court in the municipality of Guiuan, Province of Samar, during the month of March, 1952, for the purpose of trying all kinds of cases and to enter judgments therein.

OSCAR CASTELO
Secretary of Justice

ADMINISTRATIVE ORDER NO. 33

February 23, 1952

AUTHORIZING JUDGE-AT-LARGE JULIO VILLAMOR TO HOLD COURT IN MANILA

In the interest of the administration of justice and pursuant to the provisions of section 56 of Republic Act No. 296, the Honorable Julio Villamor, Judge-at-Large, is hereby authorized to hold court in Manila, beginning today, for the purpose of trying all kinds of cases and to enter judgments therein.

This is in addition to the authority granted him under Administrative Orders Nos. 203 and 205 of this Department, dated December 10 and 17, 1951.

OSCAR CASTELO
Secretary of Justice

ADMINISTRATIVE ORDER NO. 34

February 25, 1952

AUTHORIZING JUDGE-AT-LARGE MANUEL P. BARCELONA TO DECIDE IN QUEZON CITY CASES PREVIOUSLY TRIED BY HIM IN MALOLOS, BULACAN.

In the interest of the administration of justice and upon request of Judge-at-Large Manuel P. Barcelona, he is hereby authorized to decide in Quezon City the following cases which were previously tried by him while holding court in Malolos, Bulacan:

Criminal Case No. 1301—"People *vs.* Jose Cruz and Luis Cruz";
Criminal Case No. 1404—"People *vs.* Jose Balones";
Criminal Case No. 1400—"People *vs.* Matias Salvador and Crispin Sta. Maria"; and
Special Proceeding No. 6135—"Testate Estate of Asuncion Flores—Juanita Molina Enriquez Administratrix."

OSCAR CASTELO
Secretary of Justice

ADMINISTRATIVE ORDER NO. 35

February 25, 1952

AUTHORIZING JUDGE-AT-LARGE MANUEL P. BARCELONA TO HOLD COURT IN MANILA AND IN QUEZON CITY.

In the interest of the administration of justice and pursuant to the provisions of section 56 of Republic Act No. 296, the Honorable Manuel P. Barcelona, Judge-at-Large, is hereby authorized to hold court in Manila in the mornings and in Quezon City in the afternoons, beginning March 1, 1952, for the purpose of trying all kinds of cases and to enter judgments therein.

This Order amends Administrative Order No. 28, of this Department, dated February 19, 1952.

OSCAR CASTELO
Secretary of Justice

ADMINISTRATIVE ORDER NO. 36

February 26, 1952

DESIGNATING FISCAL DOMINADOR GUZMAN TO ASSIST THE CITY ATTORNEY OF CABANATUAN CITY

In the interest of the public service and pursuant to the provisions of section 1686 of the Revised Administrative Code, Mr. Dominador Guzman, As-

sistant Provincial Fiscal of Nueva Ecija, is hereby designated to assist the City Attorney of Cabanatuan City in the discharge of his duties, in addition to his regular duties, effective immediately and to continue until further orders.

OSCAR CASTELO
Secretary of Justice

ADMINISTRATIVE ORDER No. 37

February 26, 1952

AMENDING ADMINISTRATIVE ORDERS NOS. 7 AND 7-A INSOFAR AS THE ASSIGNMENT OF VACATION JUDGES FOR THE CITY OF MANILA AND OTHER PROVINCES IS CONCERNED.

Administrative Orders Nos. 7 and 7-A of this Department, dated January 23, 1952, are hereby amended insofar as the assignment of Vacation Judges for the City of Manila and the Provinces of Pangasinan, Zambales, Pampanga, Bataan, Cavite, Capiz, Negros Oriental, and Siquijor, Samar, Leyte, Davao, Cotabato, Occidental Misamis, and Zamboanga is concerned, as follows:

For the City of Manila, District Judge Conrado V. Sanchez, during April and May; District Judges Francisco Jose, Potenciano Pecson and Tiburcio Tancinco, during May; District Judges Rafael Amparo and Higinio Macadaeg during April; and Ramon San Jose, from April 16, 1952 to May 31, 1952; Judges-at-Large Demetrio B. Encarnacion and Alejandro Panlilio, during May; and Judge-at-Large Felicisimo Ocampo, during April;

For Pangasinan and Zambales, District Judges Pedro Villamor (Lingayen) during May, and Segundo Martinez (Lingayen) during April, and for Iba, Zambales, during May; for Dagupan, Pangasinan, District Judge Eulogio de Guzman during April and May; for Tayug, District Judge Rodolfo Baltazar, during April and May; and Cadastral Judge Jose Bonto for Iba, Zambales, during April;

For Pampanga and Bataan, District Judge Edilberto Barot during April and Judge Emilio Benitez during May;

For the Provinces of Cavite and Palawan, District Judges Antonio G. Lucero during May, and Jose Bernabe during April;

For the Province of Capiz, Cadastral Judge Luis N. de Leon, during April and May;

For the Provinces of Negros Oriental and Siquijor, Cadastral Judge Juan O. Reyes, during April and May;

For the Province of Samar, District Judges Jose Rodriguez and Emilio Benitez during April and District Judge Fidel Fernandez and Judge Froilan Bayona during May;

For the Province of Leyte, District Judge Segundo Moscoso and Cadastral Judge Sulpicio V. Coa (Tacloban, Leyte) during April and May; District Judge Arsenio Solidum (Baybay) during April and May, and also for (Maasin) during May; and District Judge Clementino V. Diez for Maasin, during April;

For the Province of Davao, District Judge Enrique Fernandez during April and May; and Cadastral Judge Cirilo Maceren during April;

For the Province of Cotabato, District Judge Juan A. Sarenas during April and Cadastral Judge Cirilo A. Maceren, during May; and

For the Province of Occidental Misamis and Zamboanga (Dipolog), Cadastral Judge Maximo Abaño, during April and May.

OSCAR CASTELO
Secretary of Justice

ADMINISTRATIVE ORDER No. 38

February 27, 1952

CHANGING AND TRANSFERRING THE DATE AND PLACE OF COURT SESSION IN MISAMIS ORIENTAL

In the interest of the administration of justice and upon request of Judge Jose P. Veluz of the Fifteenth Judicial District, Misamis Oriental and Bukidnon, the regular court session in Mambajao, Misamis Oriental which by law should be held on the first Tuesday of March, 1952, is hereby transferred to Sagay, same province and postponed to the first Tuesday of September, 1952, pursuant to section 54, last paragraph, of Republic Act No. 296.

OSCAR CASTELO
Secretary of Justice

ADMINISTRATIVE ORDER No. 39

February 26, 1952

DESIGNATING FISCAL DAMASO S. TENGCO TO ASSIST THE PROVINCIAL FISCAL OF CAMARINES NORTE IN THE INVESTIGATION OF THE SO-CALLED SUPPLY RACKET THEREAT.

In the interest of the public service and pursuant to the provisions of section 1686 of the Revised Administrative Code, Mr. Damaso S. Tengco, Provincial Fiscal of Cavite, is hereby designated to assist the Provincial Fiscal of Camarines Norte in the investigation and prosecution of the so-called Supply Racket cases thereat, effective inmediately.

OSCAR CASTELO
Secretary of Justice

ADMINISTRATIVE ORDER No. 40

February 29, 1952

AMENDING ADMINISTRATIVE ORDERS NOS. 7 AND 37 INSOFAR AS THE ASSIGNMENT OF VACATION JUDGES IN THE PROVINCES IS CONCERNED.

Adminlstrative Order No. 7 of this Department, dated January 23, 1952, as amended by Administrative Order No. 37 of this Office, dated February

26, 1952, is hereby further amended insofar as the assignment of Vacation Judges for the Provinces of Ilocos Sur, Abra, Iloilo, Antique, and Bohol is concerned, as follows:

For the Provinces of Ilocos Sur and Abra, Cadastral Judges Segundo Apostol, during April and May;

For the Provinces of Iloilo and Antique, District Judges Manuel Blanco and F. Imperial Reyes and Cadastral Judge Roman Ibañez during April and May, giving preference to cadastral cases in the case of Judge Ibañez; and

For the Province of Bohol, District Judge Hipolito Alo, during April and May.

OSCAR CASTELO
Secretary of Justice

Department of Commerce and Industry

SUGAR QUOTA ADMINISTRATION

PHILIPPINE SUGAR ORDER NO. 3
Series 1951–52

January 15, 1952

AMENDING PARAGRAPHS 4 AND 5 OF PHILIPPINE SUGAR ORDER NO. 1, SERIES 1951–52

Pursuant to the provisions of Act No. 4166, as amended by Commonwealth Acts Nos. 77, 323, and 584 and Republic Act No. 279, and by virtue of the authority vested in me by Executive Order No. 118 of the President of the Philippines, as amended by Executive Order No. 210, and in accordance with instructions from the Executive Office, Malacañan, in an indorsement to this office, through the Honorable, the Secretary of Commerce and Industry, dated January 3, 1952, it is hereby ordered that:

1. Paragraphs 4 and 5 of Philippine Sugar Order No. 1, series 1951–52, dated August 14, 1951, are hereby rescinded and replaced by the following paragraphs:

> "4. Sugar produced by individual regular quota planters or millers in excess of their total A or U. S. export and B or domestic allotments, *and after said A and B individual allotments of each planter, and A and B allotments of each mill as a unit, have been completely filled*, and sugar produced by non-quota planters, known as emergency planters, as well as non-status sugar from the 1950–51 crop, are hereby declared C sugar to be used by the holder of the quedan thereof during the 1951–52 crop year for export to the United States, for export to countries other than the United States, or to fill shortage in domestic allotments.
>
> "5. Emergency planters, as heretofore, are permitted to withdraw one picul of sugar per month from their respective production during the milling season for their own consumption and sugar so permitted is to be issued the corresponding B quedan-permits."

2. The Export Control Committee is to be advised of the exportable sugar as referred to in paragraph 4.

3. This Philippine Sugar Order shall take effect immediately.

V. G. BUNUAN
Administrator

Approved:

CORNELIO BALMACEDA
Secretary of Commerce and Industry

PHILIPPINE SUGAR ORDER NO. 4
Series 1951–52

January 18, 1952

CLARIFICATION OF THE PROVISION OF PHILIPPINE SUGAR ORDER NO. 3, SERIES 1951–52, DATED JANUARY 15, 1952, REFERRING TO NON-STATUS SUGAR FROM THE 1950–51 CROP.

For the purpose of clarifying the provision of Philippine Sugar Order No. 3, series 1951–52, dated January 15, 1952, regarding non-status sugar from the 1950–51 crop, paragraph 4 of Philippine Sugar Order No. 1, series 1951–52, dated August 14, 1951, as amended by Philippine Sugar Order No. 3, series 1951–52, dated January 15, 1952, is hereby further amended so as to read as follows:

> "4. Sugar produced by individual regular quota planters or millers in excess of their total A or U. S. export and B or domestic allotments, *and after said A and B individual allotments of each planter, and A and B allotments of each mill as a unit, have been completely filled*, and sugar produced by non-quota planters, known as emergency planters, are hereby declared C sugar to be used for the holder of the quedan thereof during the 1951–52 crop year for export to the United States, for export to countries other than the United States, or to fill shortages in domestic allotments.
>
> "4(*a*). ALL 1950–51 SUGAR NOT WITHDRAWN BEFORE JANUARY 1, 1952, SHALL BE KNOWN AS NON-STATUS SUGAR AND SHALL BE CONSIDERED AS PART OF THE 1951–52 CROP OF THE PLANTER OR MILL OWNER THEREOF, FOR THE PURPOSE OF FILLING COMPLETELY THE PLANTER'S OR MILL'S A AND B SUGAR QUOTAS, AFTER WHICH ANY EXCESS SHALL BE CONSIDERED

AS C SUGAR AND AVAILABLE FOR USE AS STATED IN THE PRECEDING PARAGRAPH."

This Philippine Sugar Order shall take effect immediately.

V. G. BUNUAN
Administrator

Approved:

CORNELIO BALMACEDA
Secretary of Commerce and Industry

PHILIPPINE SUGAR ORDER NO. 5
Series 1951–52

February 6, 1952

REVOKING PHILIPPINE SUGAR ORDER NO. 4, SERIES 1951–52, DATED JANUARY 18, 1952, AND DECLARING IN FORCE PHILIPPINE SUGAR ORDER NO. 3, SERIES 1951–52, DATED JANUARY 15, 1952:

Pursuant to the provisions of Act No. 4166, as amended by Commonwealth Acts Nos. 77, 323 and 584 and Republic Act No. 279, and by virtue of the authority vested in me by Executive Order No. 118 of the President of the Philippines, as amended by Executive Order No. 210, it is hereby ordered that:

1. Philippine Sugar Order No. 4, series 1951–52, dated January 18, 1952, is hereby revoked.

2. Philippine Sugar Order No. 3, series 1951–52, dated January 15, 1952, is hereby declared in force.

3. All other Philippine Sugar Orders or Field Service Instructions in conflict with Philippine Sugar Order No. 3, series 1951–52, dated January 15, 1952, are likewise hereby revoked.

4. This Philippine Sugar Order shall take effect immediately.

RAMON L. PAGUIA
Acting Administrator

Approved:

For and in the absence of the Secretary:

S. R. MENDINUETO
Secretary of Commerce and Industry

PHILIPPINE SUGAR ORDER NO. 6
Series 1951–1952

February 23, 1952

PROVIDING FOR AN INCREASE IN THE 1951–52 "B" (DOMESTIC) QUOTA, FROM 230,031.116 TO 279,505.505 SHORT TONS.

Pursuant to the provisions of Act No. 4166, as amended by Commonwealth Acts Nos. 77, 323, 584, and Republic Act No. 279, and by virtue of the authority vested in me by Executive Order No. 118 of His Excellency, the President of the Philippines, as amended by Executive Order No. 210, it is hereby ordered that:

1. There is declared an additional quota of centrifugal sugar which may be manufactured during the crop year 1951–52 for consumption in the Philippines, in its original form, or as refined sugar of 49,474.389 short tons, commercial weight.

2. Of this additional domestic quota provided in section 1 above, 47,274.389 short tons, commercial weight, shall be allocated to all standard mill companies and their adherent planters on the basis of coefficients and planters' rights set forth in, and in accordance with the provisions of, Executive Order No. 901 of the Governor-General and its Supplement, as said Order may have been or may be modified by entries in the District Transfer and Planters Registries lawfully made under the terms of Executive Orders No. 873 and 885.

3. Of the quantity of sugar declared in section 1 above, 1,000 short tons, commercial weight, shall be allocated as special amelioration allotments to operating marginal and sub-marginal mill districts as follows:

29–Manaoag	376.787	short tons
31–Norte	333.252	short tons
23–Leonor	139.569	short tons
25–Lourdes	150.392	short tons
Total	1,000.000	short tons

4. Sugar cane planters who are not registered planters, who are generally known as emergency planters, will be permitted to mill their sugarcane, but only 5 per cent of their respective sugar production shares shall be used for domestic consumption and the balance of their production shall be for export to the United States. For this purpose, 1,200 short tons of the domestic quota declared in section 1 above are hereby allocated to emergency planters.

5. The production of regular planters or mill companies in excess of their respective total "A" and "B" allotments shall be exclusively for export to the United States.

6. The allocation made in this Sugar Order shall be evidenced and enforced by Official Permits for the sale of sugar for consumption in the Philippines—1952, issued under the authority of the Sugar Quota Administrator.

7(*a*). "A" or export sugar shall be used exclusively for export to the United States and the sale of "A" sugar as domestic sugar or its exportation to foreign countries other than the United States is prohibited.

(*b*) "B" or domestic sugar shall be used exclusively to meet domestic requirements and the exportation of domestic sugar to any foreign country is likewise prohibited.

(*c*) The provisions of sub-sections (*a*) and (*b*) above shall not apply to bonafide sugar dealers who previously have secured authority from this

Office to exchange a like quantity of export sugar to be sold as domestic sugar and replaced with an equal quantity of domestic sugar for export to the United States, or vice versa.

8. No permit shall be issued for the exportation of centrifugal, washed or refined sugar or any sugar containing portion of centrifugal or washed sugar to countries other than the United States.

9. Export Sugar Permits covering "A" sugar for the 1950–51 crop still unshipped, whether in the hands of planters, mill companies or sugar dealers, shall be surrendered as soon as possible to the Sugar Quota Administration or to the corresponding mill company for invalidation and replacement with 1952 Export Permits.

10. Violation of any provision of this Sugar Order is punishable under section 16 of Act No. 4166, as amended.

11. This Order supersedes Philippine Sugar Order No. 3, dated January 15, 1952, and all other Sugar Orders and Field Service Instructions issued and promulgated in connection with the carrying into effect of the said Order are hereby revoked.

R. L. PAGUIA
Acting Administrator

Approved:

CORNELIO BALMACEDA
Secretary of Commerce and Industry

HISTORICAL PAPERS AND DOCUMENTS

AMBASSADOR SPRUANCE PRESENTS CREDENTIALS TO PRESIDENT QUIRINO, FEBRUARY 7, 1952

Statemcnt of U. S. Ambassador Raymond A. Spruance upon presenting his credentials:

For many years I have been vitally interested in and concerned with affairs of the Pacific. In this interest the Philippines and its adjacent seas have of course figured importantly. It is therefore all the more a real personal satisfaction to present to you the letter of credence from the President of the United States duly accrediting me as the Ambassador of the United States of America to the Republic of the Philippines. At the same time I have the honor to present to you the letter of recall of my distinguished predecessor, the Honorable Myron M. Cowen.

I have been most gratified during my first days in Manila to note that the Philippine people by their energy and industry have in a surprising measure rehabilitated their country from the ravages of war. It is a source of pride to Filipinos and Americans alike that we hold similar views with respect to the fundamental principles which the free world is striving to preserve. We believe that every nation has the right to live a peaceful existence based on its own traditions and experience and free from the fear of external aggression. To this end the Philippines and the United States have undertaken mutual commitments to assure the preservation of the heritage common to our countries. In the face of the evil force which stalks the world today, our first duty is to insure the perpetuation of the concepts and principles upon which a better world may be built.

Mr. President, it is my high honor and privilege to pledge to you my fullest cooperation in all matters of common interest to our two nations. I know that our mutual dedication to the same basic concepts will assure the resolution of problems in an atmosphere of cordiality and respect.

* * *

Statement of the President upon accepting the credentials of Ambassador Spruancc:

It has been a source of admiration and satisfaction to recall the important role that many great men of the United States of America played in the last war in the Pacific in which our people contributed to the highest measure of our capacity to attain our common objective. I am happy to say, Mr. Ambassador, that you are among the few who have substantially participated in the shaping of that part of our history in a vital and decisive manner, enabling the people of this country to resume their course to freedom

and peace and prosperity. It is for this reason that I find added pleasure in welcoming you today as the Ambassador of the United States of America to the Republic of the Philippines.

I share your concern for the preservation and perpetuation of the basic concepts and fundamental principles to which our two countries are steadfastly dedicated and which the free world is striving to uphold. Indeed, the course of events in this part of the world in the last two years has more than justified this attitude and has given us cause to accelerate and intensify the implementation of our mutual commitments towards the early achievement of our common end. I therefore consider indicative of a keen and positive appreciation of the portent of these events, the assignment to the high post which you now occupy, of a man of your vision, rich experience, and tried interest in the future of this country and the peoples of this area.

You may be assured, Mr. Ambassador, of the sincere cooperation of my Government and myself in all matters concerning our common interests and objectives during your tour of duty in the Philippines, which I hope will be as happy as I expect it to be fruitful of reassuring results to our two countries and the peace of the Pacific.

EXTEMPORANEOUS REMARKS OF THE PRESIDENT BEFORE THE MEMBERS OF THE PHILIPPINE CONSTITUTIONAL CONVENTION AT COCKTAILS IN MALACAÑAN ON THE 17TH ANNIVERSARY OF THE SIGNING OF THE PHILIPPINE CONSTITUTION, FEBRUARY 8, 1952.

Ladies and Gentlemen, and

Fellow Delegates to the Constitutional Convention:

I am particularly happy to receive you this afternoon because I see new faces, not only those familiar to me when 17 years ago we drafted the Constitution, but faces that seem to have disappeared from the political firmament for some time.

Last year you honored me by inviting me to your dinner and asking me to give you the address for that occasion declared by executive order to be Constitution Day every year. This year it is my privilege to honor you. I am exceedingly happy that a great many of those associated with me in the Constitutional Convention are here to recall with me those days when, in all conscientiousness, we prepared the framework of our Government.

At that time we did not envisage many of the things that we now consider necessary in order to cope with present exigencies and, perhaps, with future events. Twice we had to amend the Constitution. The later amendment did not refer substantially to the rights and duties of our citizenry. It was an act of special consideration to the citizens of the

United States in the disposition and enjoyment of the right to develop and exploit our natural resources and public utilities. The first amendment fundamentally changed our legislative branches as well as the presidential term. We now believe that we may have to introduce another amendment in the sense of reverting to the old system or presenting a more modified system of government, especially with regard to the election of members of the legislative chambers and the term of the Chief Executive.

But all along we have been quite consistent and conservative in the preservation of that historic document. Seventeen years ago we drafted it but it was in force in our country practically during the last thirteen years only. It has been my luck to contribute my share during one-third of the life of the Constitution toward implementing its preservation and making it a live document for the benefit of our people and our country.

We have scattered ourselves into the different branches and activities of the Government. Many of us have remained in their professions, others have entered the judiciary, while still others have engaged in business. All along, it has been my luck to remain in the executive department and it is only in this phase of our work—our joint work—that I could recall not with false pride my modest contribution to making the Constitution a truly living document from which our people can derive substantial benefits not only for us but for our children. It has been my luck to execute the laws, to enforce obedience to the Constitution, and to protect the rights of the people and defend them to the utmost.

I may have differences of opinion with the leaders of the Government as well as with my colleagues in the Constitutional Convention, a number of them interpreting the Constitution in one way, and I interpreting it in another way. Some may have injected their personal beliefs and convictions when they approved the Constitution, while others may have entertained divergent views. There is one thing all of us have to agree, however, and that is, that that document is only a framework of government, and the framework is not the building itself. It is something we have to build on. We have to construct an edifice with walls, windows, ceiling, roofing, floors, and every other thing needed to complete the building. To express it differently, we have to give it flesh and life. We have to make it operate for the ultimate benefit of the people so that they can enjoy their rights and privileges, and not only perform the duties imposed upon them.

It has been my fortune to contribute a great portion to the task of giving flesh and substance to the Constitution. You remember that when we started the work, we were interrupted by a terrible war. When we wanted to resume

our work of construction, building and rebuilding this nation, we were all almost in tatters. We were starving and lying prostrate. We had to muster all our energies to awaken in us the courage and determination to rise from our prostration and give vim and vigor to our life as a nation.

The Republic of the Philippines is a new building, a building of our own designing. We all know that we had to bulldoze almost everything and construct new buildings on top of those destroyed or demolished. So our work was not only one of construction and reconstruction, but also of demolition. All that needed a great deal of effort.

The years from 1945 to the present have not been long enough for the people to construct a new, strong, and enduring edifice. We are still in the midst of construction and reconstruction, and are witnessing at the same time the great problems that confront us internally as well as externally. While we are being harassed internally, we are being threatened externally. While we are building here, many of our kins are undermining our work; and while we are gaining name and prestige in our country and abroad, some people are exerting their utmost to destroy that name and prestige.

It had been a very great, almost insurmountable task that we had to wrestle with during the last five or six years. My friends, today I recall those trying years with relief. What I want to tell you is that we have managed to pull through. People who were hungry in 1945 are now better fed and better clothed. People who lost their professional activities have resumed them. People who lost their farms have rehabilitated them. And people who lost property have recovered it. Many of them are even wealtheir than they were before the war.

We have not only gone through the war, but have so reconstructed the material, the moral, and physical life, that it is now better, perhaps, than it was before the war. All this we have been able to do because we rose determined to reconstruct our country and build a new goverment and to maintain both strong and enduring.

It is my privilege to welcome you to Malacañan in a spirit of comradeship, guided by no other motive than the spirit of cooperation which steered us through during our labor seventeen years ago. I do hope that our meeting today will give us incentive to go forward hand-in-hand, shoulder to shoulder, pulling together and all bearing the burdens of nationhood.

I am particularly happy that the President of that Convention is here with us this evening. [*Applause.*] At this moment, I am reminded of what happened to President Lincoln when his former Secretary of War Stanton, tired,

exasperated, and angered by the annoyances of his comrades in the National Defense, became short-tempered and sharp-tongued. Aggressive and irascible, he told President Lincoln that he could not bear to stay longer as Secretary of War because he could not stand the continuous annoyances of his comrades in the department. Calmly, President Lincoln asked him, "Who is harassing you?"

"Oh, Major General So and So."

"Hit him hard . . . write him a nasty letter . . . the worst letter that you can make . . . make it sharp, strong," Lincoln advised.

So Stanton prepared a letter. When he finished it he went to President Lincoln and read it aloud to him. At certain points where President Lincoln thought Stanton needed promptings, he interrupted to give him encouragement: "Good . . . That is right . . . ." After the letter was read, President Lincoln asked: "What are you going to do with that letter now?"

Stanton folded the letter, put it in an envelope, and said, "I am going to mail it."

'Oh, forget it," Lincoln advised. "You should put it in the stove."

"What did I write this for?" Stanton inquired, puzzled.

"Well, when I was once angered," answered Lincoln, "I wrote a similar letter. After reading it aloud to myself, I felt better but I did not mail it. I had to prepare another letter because a letter written in anger has no place in an atmosphere of calmness which the country requires when its prestige is at stake."

A similar letter was written by Mr. Recto and I was tempted to write another. But I threw the letter into the stove, following Lincoln's advice.

Mark Twain said, "If you are mad, count four. If you are still mad after that, simply swear. Perhaps you will swear it and forget it."

I am glad you are here (addressing Mr. Recto). [*Applause.*] My friends, it is really encouraging to see each and every one of you here, having the same friendly faces that we used to have when we were together seventeen years ago during the Constitutional Convention.

Our task is not over. We are still building on that Constitution and I hope you will contribute your bit whether you are in the judiciary, in business, or in whatever activities you are now engaged, to the permanence of the Government that we are establishing on the framework of that Constitution. Let us make it such a real work of art that we who are still living, and our children who will follow us will feel justly proud of it. Thank you very much. [*Applause.*]

AN EXCHANGE OF EXTEMPORANEOUS REMARKS BETWEEN THE PRESIDENT AND U. S. AMBASSADOR RAYMOND A SPRUANCE AT THE LUNCHEON GIVEN IN MALACAÑAN IN HONOR OF THE AMBASSADOR, FEBRUARY 11, 1952

The President's remarks:

We are gathered here this noon to give Ambassador Spruance an opportunity to know our Philippine officials. It is not unusual that we gather here for this purpose. Every time a representative of the U. S. Government comes to Manila, we always give him an opportunity to get acquainted with our officials.

It is with particular interest that I want Ambassador Spruance to meet the official set-up in the Philippines, with whom he has to deal during his incumbency in office. The business between governments are always carried on a government-to-government basis but the people called upon to deal with governments would first have to be human beings and as such, do discharge their duties with human feelings and it is necessary for us to be very close to the people responsible in those negotiations in order to interpret more sincerely, perhaps loyally and faithfully, the laws of the government he represents.

It is for this purpose that we give Ambassador Spruance a chance to meet the representatives of this country, in order to be able to size them up as well as to allow himself to be sized up by our officials. I don't have to speculate or to size him up. From the very start, I was impressed by his charming personality, earnestness, and deep concern that he has in our future security.

He is a friend. His record of service in the Orient and elsewhere shows that he will always be a friend. It is because he is a friend that we want to cultivate his friendship. I wish the best of success for Ambassador Spruance as representative of the United States here.

* * *

Ambassador Spruance's remarks:

I am delighted to be here as American Ambassador to the Philippines. I have been a frequent visitor since I first came to the Philippines as a midshipman in 1908.

I love the people and love the country, and I will do all I can to aid the Philippines.

I will endeavor to do everything possible to promote mutual understanding between our countries.

I am more used to war than diplomacy. But I expect to try to learn and if I make any mistakes, I would appreciate being told so and I would try to correct them.

MESSAGE OF PRESIDENT ELPIDIO QUIRINO TO THE CONGRESS OF THE PHILIPPINES SUBMITTING THE 1953 BUDGET OF THE NATIONAL GOVERNMENT

February 12, 1952

GENTLEMEN:

Pursuant to the provisions of Section 19(1), Article VI, of the Constitution, I am submitting herewith the Budget of the National Government for the fiscal year ending June 30, 1953, the résumé of which is as follows:

Receipts	₱587,776,240.00
Expenditures	587,231,475.00
Surplus	₱544,765.00

The total receipts exceed those of 1951 by 189 million pesos; those of 1952 by an estimated 7 million pesos. These increases have been generated by the tax measures enacted in your regular and special sessions of 1950 and 1951, as well as by the continuing efforts of the tax collecting agencies of the Government to collect all taxes due.

I do not intend to recommend new tax measures. I believe that the present revenue collections can still be increased, first, by further improvement and intensification of tax collection, and, second, by accelerating our economic development activities to increase the nation's taxable wealth.

I recommend, however, that the effectivity of certain of our tax laws which will expire during the coming fiscal year be extended. The impairment, even temporarily, of the improving finances of the Government must be avoided. The income from the tax measures approved last year represents about thirty-five per centum (35%) of the total tax revenues.

The expenditures proposed have been brought to the minimum required to meet the most essential public services. There is no doubt that more funds are needed for rehabilitation and for supplying the increasing needs for governmental services of our growing population that cannot be adequately provided for by the sum requested in this budget. Budgetary requests amounting to nearly 200 million pesos in excess of present authorized appropriations had to be pruned to within the total estimated receipts.

The total estimated income for the incoming year, compared with those for this year and last year, is distributed among the major functions of the Government as follows:

	Fiscal Year 1953	Fiscal Year 1952	Fiscal Year 1951
1. National defense	₱152,748,110.00	₱147,192,246.60	₱105,450,447.70
2. Social improvement	165,273,510.00	147,496,322.35	149,270,728.26
3. Economic development	56,912,935.00	49,051,310.20	54,184,474.75
4. General administration	135,773,355.00	144,344,446.99	68,756,596.34
5. Repayment of loans and advances, including interests	62,092,015.00	69,172,205.00	45,198,284.16
6. Legislation	7,974,490.00	6,105,070.00	6,678,957.18
7. Administration of justice	6,457,060.00	5,929,017.00	5,696,539.20
Total	₱587,231,475.00	₱569,290,618.14	₱435,236,027.59

I consider the national defense and economic development plans for the coming year of paramount importance. They take precedence over other governmental services. It is upon their successful prosecution and accomplishment that the carrying out of other governmental undertakings depends. Without peace and order, no governmental activity can be normally carried out. Likewise, if the national economy is not developed, a higher level of production and employment cannot be achieved, governmental revenues cannot be increased except by oppressive tax laws, and public services cannot be administered to respond in full to the needs of our people.

NATIONAL DEFENSE

It is proposed to appropriate ₱187,300,675 for the Department of National Defense. This is ₱11,537,565 more than the appropriation for the same purpose this fiscal year. It represents thirty-two per centum (32%) of the total estimated revenues for next year. The increase represents the amounts set aside for the adjustment of salaries to the minimum rate, and for the intensification of the peace and order campaign, including the purchase of loose firearms, and the payment of pensions and gratuities to the officers and men who die or are disabled in line of duty.

ECONOMIC DEVELOPMENT

This Administration has embarked, since its inception, upon an all-out, short and long range economic development program. Results so far achieved, I am sure, give no ground for any disparagement. Advancement of the nation's economy is one of the factors that bring prosperity to the people and stability to the rendition of governmental services. Ten per centum (10%) of our general fund revenues is devoted to the prosecution of the economic development program. This does not include the advances of the Central Bank under Republic Act No. 265 for the construction of irrigation systems and of power and other industrial projects. It likewise does not include expected ECA assistance and the counterpart funds. The latter consists of the ₱50 million you have authorized for 1952 and ₱34 million that is being requested in this budget for 1953.

It is a pleasure to inform you that about $47 million of ECA assistance has been earmarked for the fiscal year ending June 30, 1952. Of this amount, $45 million has already been programmed and allocated, by mutual agreement between PHILCUSA and the ECA Mission, among the various development projects in agriculture, public works, transportation, handicrafts and manufacturing industries, education, public health, and technical assistance, including the training of Filipino technicians abroad. The balance of $2 million is to be programmed this fiscal year. For the project commodities that have begun to arrive or are scheduled for delivery up to the middle of the next fiscal year, we are committed to provide a counterpart fund of equivalent value in pesos. For this purpose, as above mentioned, there is being proposed an additional ₱34 million for counterpart purposes the coming year, of which ₱25 million will cover our commitments under the ECA program in 1953, and ₱9 million for administrative and operational expenses of the various development projects already approved.

EDUCATION

We have appropriated ₱134,877,805 for the Department of Education this year. I am proposing an appropriation of ₱145,899,840 for the next fiscal year, involving an in-

crease of ₱11,022,035. The latter represents twenty-five per centum (25%) of our total revenues. This amount is still insufficient for carrying out our educational work satisfactorily. The double-single session plan for the primary grades and the one-teacher-one-class arrangement for the intermediate grades are far from satisfactory.

We need additional appropriation of ₱7,000,000 for the opening of 3,000 new classes next school year to take care of children who will then reach school age. It is not possible to provide this amount from the expected income of the National Government without sacrificing other equally pressing governmental services.

This is the same problem which we had last year. We proposed then to amend the 1940 Educational Act so as to transfer the support of the intermediate classes from the National to the local governments. I earnestly urge the Congress to examine again the measures proposed to solve this difficulty. I believe that the finances of the local governments should be strengthened to enable them to share in the responsibility for the operation and maintenance of the elementary classes above the primary grades. To carry out this proposal gradually, the support of at least one grade of the intermediate classes may be transferred to the cities and municipalities.

I am not unmindful of the fact that various municipalities are also in financial straits. But proper attention to the assessment and collection of local revenues and a systematic budgeting of their expenditures should go a long way towards alleviating the situation. It may be advisable to re-create the municipal school funds in order that the operation and maintenance of these schools may be made more stable. Subject to adequate supervision, the establishment of private intermediate schools may well be encouraged.

SOCIAL SECURITY

The enactment of the Minimum Wage Law is a long stride towards social security. As this law fixes the minimum daily wage of a laborer in government offices at ₱4 effective July 1, 1952, the lowest annual salary or wage of a clerk or laborer under the budget has been raised to ₱1,440 per annum or ₱120 per month. It involves an additional appropriation of ₱12 million. The minimum rates of compensation of physicians and nurses employed by the Government have also been increased in conformity with the provisions of Republic Acts Nos. 664 and 649, that of physicians to ₱2,400 while those of nurses have been graduated from ₱1,680 to ₱3,300 per annum. This readjustment involves a total outlay of ₱468,000.

Another social security measure you approved in your second session provides for retirement gratuities of government officers and employees. The resulting annual government contribution to the retirement fund amounts to ₱9,200,000. This is an additional budget charge. It is greatly hoped that the objectives of this retirement law, not only to provide rewards for long and meritorious service, but also to stabilize and improve civil service morale, will be achieved.

PUBLIC WORKS

It is proposed to appropriate ₱25 million for public works next year, as against the amount of ₱35 million appropriated for the same purpose this year. I do not wish to convey the impression that I am not giving due importance to the construction, reconstruction and repair of permanent public improvements, especially our road system. It is my belief, however, that, even with this reduction, we will have enough funds for

our public works projects during the next fiscal year. The Highway Special Fund had a balance as of December 31, 1951, of ₱93,492,148.26. Part of this amount may be used to cover the deficiency in the regular public works appropriation in a manner that will not cripple the prosecution of the projects under that Fund. In addition, negotiations are under way for the provision of the amounts needed to construct the permanent public improvements programmed under ECA assistance, particularly the construction of the planned road system for Mindanao.

RELIEF FUNDS

I earnestly again urge that the fund for the relief of the victims of typhoons, earthquakes, flood, fires and similar disasters and calamities be restored to ₱4,000,000. I never before felt so strongly the need for this fund as when the Hibok Hibok erupted and the severe typhoons struck the southern islands last year. The Administration, in coordination with the Philippine National Red Cross, has done its best to give succor to the sufferers in the form of food, clothing, medicine and shelter. The lack of available funds to cope with the situation compelled me to make a public appeal for voluntary contributions. Although there was immediate response, the amount collected was unfortunately insufficient. More adequate and much needed relief could have been given by the Government if it had the necessary funds at its immediate disposal. Until now, the resettlement work on behalf of the people displaced by the Hibok Hibok eruption has not been fully carried out. Funds are lacking for the purpose. The amount herein requested will also be used for the relief and rehabilitation of dissidents who peacefully surrender to the Government and of civilians who may be deprived temporarily of means to earn a livelihood due to depredations committed by lawless elements or as a result of military operations.

FORCED SAVINGS

In the current General Appropriation Act, Congress required a forced savings of four per centum (4%) from the appropriations of each department, bureau or office. These items of "savings to be made" amount to ₱13,884,285. They were imposed in many cases indiscriminately and without consideration of actual needs, thereby upsetting considerably the spending program of each office. To prevent the recurrence of these hardships and inconveniences in the administration of our finances, I ask for the discontinuance of the forced savings provisions in the appropriation act for the fiscal year 1952–1953.

BUDGETARY DEFICITS AND PUBLIC DEBT

The deficits in the general fund accumulated since February 27, 1945, amounted to ₱175,283,592.87 on June 30, 1951, which were ₱53,625,536.54 less than the accumulated deficits of ₱228,909,129.41 in June, 1950. It is estimated that on June 30, 1952, the accumulated deficits will be about ₱173,200,000 and ₱172,700,000 on June 30, 1953. If actual revenue collections exceed the budgetary estimates, as they have exhibited a consistent tendency to do so these past few years, and/or the authorized appropriations are not all expended, the accumulated deficits will be automatically amortized and reduced by the excess of collections and the savings in expenditures at the end of each fiscal year.

The public debt amounted on June 30, 1951, to ₱1,027,037,561.69. As of December 31, 1951, the over-all total of the public debt amounted to ₱809,210,515.53. The decrease since June 30, 1951, was largely due to the final payment made by this Government to the United States Treasury of all the pre-1934 bonds issued in the United States and the reduction in the previous estimate of backpay obligations from ₱400 million to ₱300 million. Of the December 31, 1951, balance, ₱71,953,699.63 pertain to the provincial, municipal and city governments and to government corporations (ex-

cluding back pay), while ₱737,256,815.90 pertain to the National Government (including back pay of provinces, cities and municipalities and the government corporations).

The composition of this indebtedness of ₱737,256,815.90 of the National Government is as follows: (*a*) back pay, ₱300,000,000; (*b*) advances by the Central Bank for rehabilitation and economic development, ₱200,000,000; (*c*) budgetary loans of 1947 and 1950 from the United States Government and the International Monetary Fund, ₱195,200,000; (*d*) budgetary loans by certificates of indebtedness, treasury bills and treasury notes, ₱38,931,500; (*e*) permanent improvement loan of 1941, ₱2,500,000; and (*f*) the 1951 land purchase loan, ₱625,315.90.

Our total public indebtedness of ₱809,210,515.53 represents a per capita obligation of ₱40. The entire debt of the National Government is relatively very small, whether considered on a per capita basis or in relation to the taxing capacity of the Government.

As against the reduction in our accumulated deficits and public indebtedness, our accumulated expenditures for permanent public improvements and for investments have considerably increased largely due to the following items: For rehabilitation of government corporations and contribution to government-owned and private financial institutions, ₱105,857,802.52; for permanent public works, such as ports, piers, wharves, irrigation works, river controls, roads, bridges, etc., paid from the General Fund, ₱149,386,068.85; for the reconstruction of school buildings, ₱53,446,138.90, or a total capital investment of more than ₱308,690,010.27.

BALANCED BUDGET

During the current fiscal year, and for the first time since liberation, the budget is finally being balanced. Likewise, we shall have a balanced budget for the next fiscal year. I have taken definite steps to avoid overdrafts. Administrative Order No. 178, which I append to this Budget requires all spending services of the Government to program their activities within the amounts appropriated for them. This Order makes any official responsible for incurring an overdraft personally liable therefor. I am also requiring a careful and continuing scrutiny of income and expenditures so that immediate steps may be taken to prevent overdrafts in case income decreases below the estimates upon which the annual appropriations are based.

Thus, the financial difficulties that appeared well-nigh insurmountable during the past few years have definitely been overcome. With favorable climate for the expansion of economic activity, public revenues are increasing. We must spare no effort to keep up the trends. We must maintain and strengthen the gains already made.

We still have vast projects requiring large financing. The peace and order campaign which every citizen of this country is desirous to see happily terminated must be followed through. Every peso that this campaign will need must be provided. The prosecution of the agricultural and industrial development program must be accelerated and intensified. Our ultimate objectives of increased production to provide greater opportunities for fuller employment and higher standards of living must be achieved. All these challenge our vision, statesmanship and courageous decision.

We have already created conditions in our country during the past few years which have enhanced our credit abroad and placed us in a position to concentrate our attention on further constructive pursuits. The record of this Congress in its last two sessions has given ample evidence of high statesmanship and determination towards the strengthening of this position. In this, I cannot but give full assurance of my wholehearted cooperation. Our people cannot expect less of us during your present session.

Respectfully,

ELPIDIO QUIRINO
President of the Philippines

The CONGRESS OF THE PHILIPPINES
MANILA

EXTEMPORANEOUS REMARKS OF THE PRESIDENT IN LAUNCHING THE FIFTH NATIONAL FUND CAMPAIGN OF THE PHILIPPINE NATIONAL RED CROSS AT MALACAÑAN SOCIAL HALL, FEBRUARY 14, 1952.

Ladies and Gentlemen, and Friends:

We are gathered again this evening as in the past to launch the annual drive for Red Cross funds. The occasion is not different from the previous ones. The only difference perhaps is that we have better reasons to collect more funds and appeal to the more liberal generosity of our people in order to provide the Red Cross with adequate finances so as to enable it to cope with the increasing calamities that the country has suffered.

You may not have noticed it, but every year that we launch a fund drive, our people seem to be beset with a greater number of calamities. Last year, we witnessed different kinds of calamities. Our people were the victims of three typhoons that lashed the country, especially the southern portion of the Archipelago. We saw the eruption of the Hibok-Hibok Volcano and also other volcanoes but of a political nature.

In fact, we suffered physical, political, and moral calamities. But it is physical calamity that we have in mind at present. Because of these increasing calamities, we have been providing funds for the care and relief of our people.

The regularity with which calamities occur is becoming a worry to our country. Formerly, we had only one or two typhoons a year. Last year we had three. Formerly there was only one eruption of a volcano every twenty or thirty years. Now there is an eruption almost every year. Perhaps, other volcanoes may erupt again in other parts of the Philippines.

I heard the other day that an American visitor who was residing temporarily in Iloilo was alarmed by the prediction of an American scientist or geologist that some day a volcano in Iloilo would erupt and sink the whole island of Panay. The visitor got so scared that he gathered all his belongings and prepared to return to the States without loss of time.

This is but a notice or warning to us. Although we don't believe in it, we know that there are lots of volcanoes in the Philippines, not only in the southern islands but also in other portions of the country.

But of one thing we can be sure. There has been an increase in the number of typhoons that have visited the Philippines in recent years. I understand the typhoon belt is extending in the Philippines from the north to the south. Mindanao, which heretofore has not been affected by typhoons, is being threatened and the northern part of Mindanao has already been threatened. Camiguin is another portion of Mindanao.

We have had for years many extinct volcanoes in the Philippines, but we don't know how many of them may suddenly erupt without giving anybody a single moment

of preparation. So it is the better part of wisdom to prepare for any eventuality. The successive, almost periodic eruption of volcanoes, and the frequent recurrence of typhoons have put us on our guard. We must be ready to cope with them in a more scientific manner.

The National Red Cross, I understand, has taken steps to provide funds for future eventualities. For instance, it has organized new services: the home service, which helps people in their homes not only to prepare for calamities but also to present their claims for damages in case such calamities occur. The other is the military welfare service which has to do with relief to be extended to soldiers not only here but in Korea and in other countries. Another is the safety service—training people especially in first aid so as to prepare them to cope with any situation. All these services are necessary as they teach our people how to meet with any calamity in a scientific way. These new activities require more funds.

The increasing demand for funds and services makes it imperative that we increase every year our quota contribution. This year, therefore, the National Red Cross as well as the government has to appeal to every citizen of moderate means. I don't believe we have to appeal to the poor although many of them are even more eager and responsive than the wealthy, because they are more familiar with the work of the Philippine National Red Cross. The traditional charity of the Filipino people and their well-known hospitality give us ample assurance if not confidence of success. I am sure they will respond most generously.

This year, therefore, we have three reasons for raising additional funds: first, for relief during calamities; second, for scientific and other needs in meeting new calamities hitherto unknown to us; and, third, to perpetuate the feeling of charity because people who cherish that feeling shall never perish because God knows how to protect those who love Him.

Ladies and gentlemen, I am glad to have been able to participate in this drive and, although I am not strong enough financially to give what is expected of me as the first citizen of the country, I wish to offer to you one thousand pesos. [*Applause.*] Thank you very much.

FORTIETH MONTHLY RADIO CHAT OF THE PRESIDENT, BROADCAST FROM MALACAÑAN, FEBRUARY 15, 1952

Fellow Countrymen:

I spoke to you last month of the 3 C's, of the urgency of concentration, cooperation, and coordination in all our work. I expressed it as a positive resolve not as a pious hope.

But while we are thus concentrating our constructive efforts to accelerate our creative momentum to maintain

and expand our gains for our nation's security and welfare, we are again being distracted by power politics in many quarters.

At my expense for example, we have been unnecessarily unhappy and divided over the issue of selling sugar outside a market dependent upon a special agreement between our country and the United States. Some people in our midst have found a convenient handle in this question to create confusion, generate suspicion, and inspire division. The government action on this matter was based upon a temporary policy adopted after consultation with the representative elements of the sugar industry in my office on December 29, 1951. No person or entity was given any special privilege. And yet there were many misgivings making it appear as if I were protecting somebody.

We have not been able to wean ourselves from the inveterate habit of seeing official actuations with an invariable selfish motivation, picturing several officials, including the Chief Executive, as inspired by unholy and ulterior designs, thus spreading distrust and disaffection solely to confuse for a political advantage, stalling machinery geared for productive work.

The practice has been of such an extent as to compel the institution of criminal action to protect my name and that of the government. As head of state, I should not go to this extreme. It is the people and not one judge of first instance who should pass upon my conduct.

It is small comfort to dedicated servants that politics has not changed much down the years; that hatred, slander, and calumny have been the lot of those with the biggest problems to solve; that the victims of this national, democratic habit so called have been those who left the greatest mark on their times.

The manner in which my name is being arrogantly besmeared by sanctimonious champions of truth and virtue with parliamentary immunity has placed me before the bar of public opinion.

Again I have been erected, after a fashion, as a convenient wall for a political fronton. And opportunists continue playing their game regardless of the kind of cesta they use, as long as they can hit the wall and continue playing the game.

This pastime is what some people call one of the gifts of democracy. It permits them the freedom to say anything, freedom to destroy, freedom to assassinate the character of any man no matter in what position he may be placed in the Government or in society.

Normally, this situation might merely mean an innocent provision for comic relief. It takes on a tragic aspect for us when we consider how much time presses for the prosecution of a job so vital to our people's security and well-being, and there is such little precious time to spare.

For the real sufferer in this situation is not Elpidio Quirino, or any other individual similarly placed. The real sufferer is the community, the nation, that has been led to expect constructive effort and undistracted devotion of those chosen to labor for its safety and well-being. The common good is made to wait upon the thoughtless vagaries of politics, it is sacrificed for the exigencies of personal ambition.

That this is a chronic condition in a democracy under whatever sky, does not of necessity require our people to remain helpless and impotent pawns in a selfish game of power.

The untoward result comes of purely human actuation and therefore is within the power of human action to correct. If there is evil in the genius of men under a democracy, there is also good. It becomes a question of making good preempt evil. It is an article of our democratic faith that free men are in a better position to fulfill their genius for good if they are so minded.

My dear friends, the time has come for our people to adopt a more sober attitude in the exercise of democratic rights. There has been too much ill-wishing, not to say malice, injected and generated in the discussions of serious problems of state. Public discussion has deteriorated into wasteful expenditure of heat, instead of dispensing light basic to constructive action. It has bred irresponsibility and confusion to the benefit alone of the professional subverters of our free institutions.

And so it is that politics, exaggerated ambitions, a monopolistic pretension to virtue—all these joined many times over create the unwholesome, murky and poisonous atmosphere that precludes concentrated, effective attention to our constructive pursuits.

This is a great pity. Our people have the capacity, the conviction, the power to press a constructive program of action forward to advantage if they will but put their mind to it. We have done it in the last few years in the face of many obstructions not wholly of our own creating and quite beyond our control.

But today I submit that with many of such difficulties overcome, with the measure of recovery we have so far achieved, most of the obstacles that remain impeding a faster rate of progress depend largely upon our decision and control. We are quite the master of our future, and all we need is the self-imposed discipline that spells mastery.

I appeal to you all therefore for greater discipline in the conduct of our affairs as a democracy. This is not to shield the sensibilities of a head of state who has not ceased to be a human being. It is to save our people the needless suffering and deprivation consequent on inability to act constructively because of a perpetual state of strife that is petty, political, and personal.

It is a grateful and gratifying experience to get a confirmation from the most rabid critics of this administration that today our country has entered a period of rebirth. You can be sure that it was no accident that our people have bridged the chasm of despair, rediscovered themselves, and have filled their lungs with the invigorating air of freedom. Our people certainly can do much more, infinitely more, if they take care not to fritter that invigorating air to generate petty partisanship, class or regional hate, confusion, and mutual suspicion.

For my own part, it should not be necessary to proclaim that I have no share in any corporation, no interest in any business—as I have none indeed, and never had any. I do say that I am proudly in a position to follow the dictates of my conscience without fear or favor to anybody. I am confident that time will vindicate me. But I certainly demand strict observance of the established policies and decisions as well as the business of the state, seeing that the laws are properly executed, as is my sworn duty.

My only aspiration is to live and be able to say to my successor: A sick man, I undertook the care of a weak country still sick of war wounds. Devotedly, I gave my all to seek its recovery. I am now delivering it to you, healthy, strong, and respected. True to my ambition, I am returning home fortunately to rejoin the poor to which I belong.

EXTEMPORANEOUS REMARKS OF THE PRESIDENT AT THE INAUGURATION OF THE REHABILITATION FINANCE CORPORATION BUILDING, FEBRUARY 16, 1952.

Ladies and Gentlemen, and Friends:

I am happy indeed to be with you this afternoon, as I considered the occasion as my homecoming to this institution. I was once vice president of the Agricultural and Industrial Bank, and for all I know the RFC is but a development, an expansion of that bank. All the activities undertaken by the Agricultural-Industrial Bank are the same as those in which the RFC is now engaged.

Of course, the dream of organizing this institution belongs to one of our most illustrious statesmen. This building, therefore, is an architectural symbol of our efforts to reconstruct our country, giving stress to our economic development as the basis of our permanent existence. This is a beautiful realization of a more beautiful dream. President Roxas was rich in vision and intellect. People who dream beautiful dreams do not dream long because if they dream long the castle they build in their minds become smaller every minute that they think of it. Were President Roxas alive today, I know he would still not be satisfied with this building although it is beautifully constructed. There were many things behind the dream not expressed or embodied in this edifice; and they were things of beauty. It is easy

to dream but hard to make the dream come true. Under difficult circumstances we have executed my distinguished predecessor's beautiful dream. It has fallen upon me to realize one of them.

I am reminded of an incident. One morning, I drove through Plaza Goiti sandwiched between President Roxas and Mrs. Roxas. We were then just inaugurated as President and Vice President of the Republic. We passed through the main thoroughfares up to Dewey Boulevard, conversing. Mrs. Roxas asked her husband, "What are you going to do with all those buildings?" pointing to the Post Office, the Legislative Building, the departments of finance and agriculture, and the Manila Hotel in the vicinity. And Roxas answered, "Well, we have plans for the small ones. The bigger ones, I will leave them to Quirino." [*Applause.*]

One of the first things I did when I assumed office was to go over the same territory and make a survey of what could be done to them in order to rehabilitate the bigger buildings.

We now have plans to reconstruct our home industries and revive all the activities that flourished before the war. The most important thing then was to reconstruct the big buildings pointed out by Mrs. Roxas. We had at that time ₱25 million earmarked for the construction of the capitol at the new capitol site. I saw to it, through the representative of the United States Government in Manila, that part of that amount be diverted to finance the reconstruction of the Finance Building, the Agriculture Building, and the Legislative Building, the rest to be spent for the construction of schools and municipal buildings in provinces and municipalities which were still unable to reconstruct their buildings.

The plan was realized and in less than a year after my assumption of office, the Legislative, the Finance, and the Agriculture buildings were reconstructed. That was just the beginning of our huge program of reconstruction. There were many others which we had to reconstruct but we planned also for the financing of their reconstruction.

Heretofore—at least during the last three or four months—we have witnessed the inauguration of new buildings constructed by private entities. I became almost a professional sponsor for so many buildings dedicated to agricultural, commercial, and industrial activities. I have considered it one of the best pastimes to go from one new building to another, all devoted to constructive enterprises and be a centerpiece of the inauguration ceremony.

Today, I am proud to have been able to reach this place, recall the difficulties the Agricultural and Industrial Bank had to go through, and witness the wonderful achievement of the RFC, the happy realization of the most beautiful dream of a great man. . . .

My dear friends, the so-called total economic mobilization program referred to by Governor Mapa has been derided or disparaged, but it is bearing fruit. It may be high-sounding, but it is as great an aspiration as the dream of past thinkers and statesmen now being realized.

This year we will begin inaugurating other projects. Tomorrow, I will go to Mariveles and inspect the almost half-completed construction of the shipyards and steel mill being undertaken by the National Development Company. These projects will be inaugurated about the end of the year.

Last year I went to Maria Cristina, Lanao, to see how the hydroelectric power is harnessed. I have been told that by the latter part of 1953 that project, that is, the hydroelectric and the fertilizer projects, will be finished.

Pretty soon we shall be inaugurating other projects. We have made a good beginning. I am sure we shall have as good an ending. We have enough funds to finance the continued construction of a huge program of hydroelectric power plant in the Mountain Province, the Ambuklao hydroelectric project. We have the $10 million granted by the Export and Import Bank as well as the funds set aside from our own for the same project. The basic industries will contribute to the development of cottage industries which will distribute as widely as possible material progress.

Other projects are included in this much disparaged total economic mobilization program. I shall not recite them at this moment. However, I want you to observe the trend of events in the nation's activities and check up on what we said in 1948. Perhaps you will fully agree with us that that program was not launched in vain.

My friends, the Philippines has risen as one of the most progressive and wide-awake countries in this part of the world. People who have come to the Philippines from abroad, whether from the new or the old world, are one in extolling to the skies the efforts we have exerted and the rapidity with which we have been able to rise from our prostration.

I said once, and I want to repeat it today, that we need more encouragement, more cheerfulness, more positive thinking in order to carry out our program of national stability. The RFC is one of the manifestations of our determination to rehabilitate our country. After having developed and financed great industries, our program will be directed to smaller entities to increase our units of production.

Recently, I conceived the idea of creating rural credit banks. Our farmers in the rural districts, although not neglected, have not been able to borrow loans to finance their enterprises. It is necessary that the Government establish financial branches in regions of production in order to reach our farmers and promote their industrial activities. Such branches must be distributed so that they will be able

to give financial assistance, at least in the beginning, in the form of credit loans at least as liberal as those extended by foreign institutions to their nationals. I don't see why we should show such lack of confidence in our own countrymen when foreign institutions are giving liberal loans and showing confidence in their nationals. Why should we be so strict about giving credit when we see what is happening around us?

Rural banks or credit institutions should be created in order to spread financing benefits and liberal credit should be extended to productive regions to enable the rural people to secure proper improvement. We are now definitely on an upward trend, despite critics, deprecators, and detractors who like to paint a dark future just to fool others if not themselves.

Our life today is much better than before the war. Why should we discourage ourselves? Who is going to encourage us when we need occasionally a pat in the back? Who is going to give us the proper encouragement? We must develop confidence in ourselves and confidence in our future. We must take advantage of the opportunity offered us as we rise in prestige economically, politically, and internationally.

My friends, these are but the beginning of our national effort. I refer to the heroic efforts of our people when they rose from our prostration more determined than ever. This building has been built through such efforts. We have to spread that invincible spirit not only in this organization but in every other constructive pursuit. I want this organization to take advantage of the present favorable trend so that we may see soon the Philippines become beautiful, peaceful, and as strong as any other country on the face of the earth. [*Applause.*]

And to give you encouragement, I wish to make a pledge that since this institution, instead of just being a service institution, has made profits after rendering its services, I will give it every amount possible provided it will establish more branches in producing regions. [*Applause.*] Ladies and gentlemen, I thank you. [*Applause.*]

EXTEMPORANEOUS REMARKS OF THE PRESIDENT AT THE AWARDING OF PLAQUES TO THE PHILIPPINES' MOST OUTSTANDING PROFESSIONALS AT MALACAÑAN SOCIAL HALL, FEBRUARY 17, 1952

Ladies and Gentlemen:

It looks as if there was a connivance between the organizers of this evening's program and the office of the chief executive . . . because the certificate which was just read and awarded to me is the biggest of all those awarded here.

I want to thank Dr. Dalupan on behalf of the men in charge of the Golden Jubilee of the Public Educational System for having found time to perform the task of presenting the certificate and the medal to me.

We are gathered here this evening principally to recognize the splendid records of service of the awardees in their respective fields. This hall, which is better known as the Social Hall of Malacañan, will henceforth be named the Hall of Fame. For the past four or five years, this hall has witnessed the awarding and presenting of certificates and medals and all kinds of recognition for excellence ranging from the Mother of the Year, the Father of the Year, the Educator of the Year, to the most outstanding representatives of the professions whose awards have just been received by them.

Indeed, I was quite disgusted at the beginning when I discovered that there was no award for the legal profession. When I asked Dr. Eraña why the lawyers were excluded, he gave a plausible explanation. In the first place, he said, "the bar examiners don't belong to our association. They are members of the supreme court. But the most valid reason is the fact that the lawyers have disagreed after consultations with their respective associations, as to who is the most outstanding member of their profession."

But there should be an award also to a politician. If you don't want the legal profession to be represented, at least you should recognize the politicians as the architects of the Republic. You scan the history of every nation and you will realize that the politicians are the ones who build the nations. And the politicians are the professionals among the professionals. They come from different professions. There are lawyers, pharmacists, engineers, opticians, farmers, nurses, and members of other professions known to mankind. And these compose the set of officials that build the nation and direct its affairs. They are often disparaged and abused because of politics. Nevertheless, it cannot be denied that after the political fight is over, many of us survive the ordeal and manage to be at the head of the state or to assume the position which gives us the opportunity to direct the country's affairs. So, whether you like it or not, the politicians, as professionals, have been regarded as the architects of each nation. They are the architects of the Republic of the Philippines. Now, why should we not award a certificate to the politicians?

The certificate I received this afternoon was not in recognition of my being a politician but of my having been a *barrio* school teacher who rose to the Presidency. I am receiving this certificate as a public servant and not as a politician. Still I hope to be able to receive one from you some day as a successful politician in spite of my seemingly numerous ill-wishers, detractors, and political debunkers.

My friends, the awardees this afternoon are the real architects of this Republic. The politicians, those placed in a position to direct the affairs of the state, cannot accomplish or achieve the national objective without the assistance of the specialists and technicians in the proper implementation of national policies.

I won't mind being criticized for the reduced number of our professions which have been the recipients of awards this evening so long as you have the quality. It is not the number of professions that counts. Rather, it is the quality of the service and the distinction shown. In this sense, the Philippines in proportion is not far behind in achievement, in new contributions to world progress, or to civilization these recent years. Our representatives who have been going to international conventions, conferences, unions, and assemblies, have shown not only ability to discuss professional matters but also ability to adjust themselves as the exigencies of the moment demand.

Something more than mere technical knowledge is needed to insure the success of a nation's activities. These different professions represent various and perhaps unorganized threads of human activity. When the time comes for us to weave all these threads into the warp and woof of our national development, we weave them into the pattern of our national life. The work of our professionals has been recognized as part of our accomplishment as a civilized nation.

We have received lavish praises from our friends across the seas. We are not going to rest content with such praises. They serve merely as an incentive for us to go farther, or reach out higher. The Philippines needs many things we have not yet realized.

In an informal talk I delivered to the UTOP two or three weeks ago when they gathered at Malacañan to greet me, I suggested several new things which I think ought to be accomplished if we are to develop our country to the utmost possible, in accordance with our resources and the great capacity of our people to avail themselves of new inventions and new discoveries which have been the basis of many modern advances in our constructive activities. But there is something more to expect from our people. We are known to have great aptitude for learning. We have already shown how quickly we have learned how to produce two harvests of rice a year instead of only one.

We have learned how to raise better fruits which have given us name and fame outside the Philippines. The mango is one of them. I understand many of our farmers have succeeded in making the seeds smaller and the flesh bigger.

At the same time, we have been able to secure or discover a new variety of rice. This rice need not be planted twice a year. Once is enough. It is called Winketon. It grows like cogon. Once planted, all that the farmer has to do is water it, fertilize it, and when the grains come out, he harvests them. Then you wait for the next harvest as the roots will sprout again and yield new grains.

That is one discovery. I am wondering whether we could also make other discoveries, such, for instance, as making a hen lay two or three times a day instead of only

once or making cows bear two or three calves, and mares three or four colts instead of only one. This sounds rather unusual. Perhaps for the moment it provokes laughter, but science has no limit. We have discovered many things which in time will enable us to approach the moon. We never knew before that we could fly across the space or talk across the seas or through the air. All that is now a reality and more. Science is being developed with amazing speed and we can always utilize the latest scientific advances and discoveries.

In our country, we are learning a lot more things. If our scientists are as up-to-date and wide awake, as I think they are, I have no doubt that they can go much farther and discover more things which will enable us to realize our national objective faster. Why don't we start right now? I appeal especially to the scientists, the chemists, and the engineers to work on something which would permit us to convert cassava into alcohol. I understand cassava is a source of alcohol.

Somewhere in Egypt, people learned how to produce electricity out of peanut shells. They even discovered how to imprison the wind and convert it into motive power. All this could well be used to our own advantage.

Ladies and gentlemen, we need to invent new things. Our territory is limited. So is our population. It is our duty and responsibility to do our utmost to accelerate discoveries and inventions for the advancement of our country and people. We must not be content with giving or receiving awards. We must make specific and positive contributions. We must show to the world that what we contribute is of value and benefit to man. In this way, we can improve the lot of this generation and the generations to come.

I want to give the greatest encouragement to the activities of this association by extending full recognition to the men and women who distinguish themselves in their respective professions. I will make its decision an official one and recognize its awards as official. I shall be very happy and proud to be with you again next time or next year. I wish to see more awards given to men and women such as those the association has distinguished this evening. I know we have more men and women who can discover new things with which to contribute to the stability of the state, the happiness and distinction of the Filipino people and our Republic.

Ladies and gentlemen, I congratulate you all for the efficient manner in which you have selected the awardees. It was a painstaking process. You have done the work wisely and conscientiously. I hope that in the future we shall have more men and women of this type of whom we can justly be proud. Thank you very much.

DECISIONS OF THE SUPREME COURT

[No. L-4027. October 2, 1950]

JEAN L. ARNAULT, petitioner, *vs.* POTENCIANO PECSON, Judge of First Instance of Manila, respondent

1. CRIMINAL PROCEDURE, RULES OF; DUE PROCESS OF LAW AS CONSTITUTIONAL RIGHTS OF ACCUSED INCLUDES NOT LESS THAN TWO DAYS TO PREPARE FOR TRIAL AND FREEDOM OF ACTION.—One of the most vital and precious rights accorded accused by the constitution is due process, which includes a fair and impartial trial and reasonable opportunity for the preparation of defense. While the constitution and the law of the land do not specify what this opportunity is to consist of, beyond stating that accused shall have not less than two days to prepare for trial (sec. 7, Rule 114), it is by necessary implication within the court's sound discretion in exceptional cases to allow him, besides time, adequate freedom of action, if the courts are to give form and substance to this guaranty.
2. ID.; RIGHT OF ACCUSED TO PREPARE FOR TRIAL; NO HARD AND FAST RULE AS TO WHAT IS REASONABLE TIME.—In the nature of things, no hard and fast rule can be laid down as to what is reasonable time or reasonable opportunity. Each case must be determined by its peculiar circumstances.
3. CONSTITUTIONAL LAW; SEVERAL DEPARTMENTS OF GOVERNMENT; SEPARATION OF POWERS IS NOT RIGID AND ABSOLUTE.—The separation of powers is not rigid and absolute but abstract and general, intended for practical purposes and adapted to common sense. There is no such thing as complete and definite designation by the constitution of all the particular powers that appertain to each of the several departments. The constitutional structure is a complicated system, and overlappings of governmental functions are recognized, unavoidable, and inherent necessities of governmental coordination.
4. ID.; ACTION BY JUDICIARY SHORT OF RELEASE ON PRISONER OF LEGISLATIVE BODY; IS NOT IMPAIRMENT OF SEPARATION OF POWERS.—Any action not amounting to a release of a prisoner committed by the Senate to prison, taken by the executive and judiciary departments with respect to such prisoner in the legitimate discharge of their respective functions, is not impairment of the doctrine of the distribution of governmental powers. The fact that a person is a prisoner of the Senate or of the House does not, under the principle cited, exclude other departments during his incarceration from trying or investigating him in matters pertaining to their spheres, in much the same way that a prisoner by judgment of a court of justice is not placed beyond the reach of the legislature and the executive to summon for examination and to allow in relation to the investigation to go anywhere under guard to get such evidence as the investigator or the prisoner might deem important.
5. CRIMINAL PROCEDURE, RULES OF; ACCUSED'S REQUEST FOR CHANCE TO MAKE HIS DEFENSE IF REASONABLE AND NOT FOR DELAY SHOULD BE GRANTED.—Where a request by a defendant charged with crime for a chance to make his defense is reasonable

and made in good faith and not for delay, it is good policy to veer towards the liberal side avoiding refinements of argument that may serve only to hide the substance of the issue. It is even of greater importance to the cause of justice for courts to deviate from the stereotyped technical rules of practice and lose a few hours than to run the risk of depriving accused of the requisite opportunity to present his side of the controversy.

ORIGINAL ACTION in the Supreme Court. Certiorari, prohibition and mandamus.

The facts are stated in the opinion of the court.

Augusto Revilla for petitioner.
City Fiscal Eugenio Angeles for respondent.

TUASON, *J.:*

This is a petition for certiorari, prohibition and mandamus, assailing alleged refusal by the Court of First Instance of Manila to grant the petitioner ample opportunity to prepare his defense in criminal case No. 12821 of that court, in which he is charged with income tax evasion. In his prayer the petitioner asks that Judge Pecson, the respondent judge, be commanded to allow him to go out of Bilibid Prison under guard to look for and confer with his witnesses, but from the allegations in the body of the application and annexes thereto, it appears that the motions submitted to and denied by the court were that the accused be allowed to take papers from his office in the Trade and Commerce Building on Calle J. Luna, Manila. We will regard the last as the relief which the petitioner seeks in these proceedings.

The pleadings show that the petitioner is under prosecution by an information filed by the city fiscal on May 31, 1950, for a violation of the National Internal Revenue Code, in that, it is alleged, in certain transactions he received for one Ernest H. Burt a total net profit of ₱1,480,000, the income tax on which, amounting to ₱1,089,270, the accused had the duty under law to pay but did wilfully and unlawfully fail, neglect and refuse, despite repeated demands, to do.

The accused, who is in confinement in Bilibid Prison in Muntinlupa for contempt of the Senate, filed on July 6, 1950, through his attorney, a motion with the lower court to order the Director of Prisons to permit him under guard to get papers pertinent to his case from his office in the Trade and Commerce Building on J. Luna Street, Manila.

On the same date, Judge Pecson denied that motion on the ground that, since the accused was imprisoned by order of the Senate, "it would be improper to grant said motion because it would be an encroachment on the prerogatives of the Senate."

Undaunted, the accused, under date of July 27, reiterated his motion, citing the fact that one Aurelio Alvero and one Andres Camasura as defendants in other criminal cases had been allowed to leave Bilibid Prison under guard to prepare their defenses. He added that all the papers he needed for his defense were in his office and in his house and that no one else but he had access to them.

On July 28, Judge Pecson, "considering the motion well founded," "authorized (the Director of Prisons) to allow the accused to go to his office and residence under guards on July 29, 1950 from 9 a.m. to 11:30 a.m. at the most for the purpose of getting all the necessary papers which he needs for his defense."

On July 29, the accused protested that two hours and a half was not enough to enable him to take advantage of the court's liberality and stated that he had to have at least half a day.

On July 31, the court set the last motion for August 2, at 8:30 a.m., with the warning that after hearing thereof the trial of the case on the merits would proceed immediately.

It is alleged in the application for certiorari and mandamus that on August 2 the court, after taking up the motion of July 29, manifested willingness to grant the same but changed its mind when the city fiscal objected unless certain conditions were imposed. These conditions, according to the petition, were: (1) that the petitioner first reveal the nature and contents of the documents which he wanted to get as well as the exact parts of his office and his house in which the documents were being kept and the persons who, besides the petitioner, had access to said documents; (2) that the defendant tell the court whether he could not entrust the key or keys to the containers of the documents to a person of his confidence; (3) that the guards to accompany the accused be instructed not to allow him to destroy any of his documents because the city fiscal intended to get a search warrant for their seizure; (4) that the accused make a list and give the description of the documents which he should have removed from his office or house.

Petitioner's counsel objected to these conditions telling the court that they were equivalent to a revelation of the evidence for the defense and to forcing the defendant to testify against himself.

One of the most vital and precious rights accorded accused by the Constitution is due process, which includes a fair and impartial trial and reasonable opportunity for the preparation of defense. While the Constitution and the law of the land do not specify what this opportunity is to consist of, beyond stating that accused shall have not less than two days to prepare for trial (section 7,

Rule 114), it is by necessary implication within the court's sound discretion in exceptional cases to allow him, besides time, adequate freedom of action, if the courts are to give form and substance to this guaranty. Other judges conscious of this principle have allowed prisoners with proper safeguards to leave the prison walls with the object of securing evidence, without in so doing exceeding the bounds of their authority, of propriety, or legal procedure. The respondent judge himself in his order of July 28 considered the petitioner's motion meritorious and would allow him two hours and a half. Leave to go under guard outside the prison or the courtroom would not, as feared, set a dangerous precedent, for the matter is always subject to the control and discretion of the court to be judged according to its merits.

In the nature of things, no hard and fast rule can be laid down as to what is reasonable time or reasonable opportunity. Each case must be determined by its peculiar circumstances. What are the facts in this connection? And are they such that a denial of defendant's request would constitute an abuse of discretion justifying intervention by the Supreme Court?

On this feature of the case it appears that the accused was already in jail for contempt of the Senate when the present criminal action was started. Having been committed to prison for another cause which has only an indirect bearing on the instant prosecution, and not foreseeing in all probability the turn which his imprisonment for contempt would take, it is justifiable to assume that the defendant did not bother, and had no time, to arrange his evidence and put himself in readiness for this prosecution which, as just stated, was posterior to his commitment to prison. From the character of the indictment and of the transactions involved, there is also reasonable ground to believe that much if not chief of defendant's evidence is documentary, not merely testimonial which could be assembled with a mere postponement of the trial; and remembering the volume and diversity of his business dealings, there is added ground to suppose that the defendant possesses numerous and mixed records and documents pertaining to diverse matters and kept in separate files. Lastly, the accused stated in his motion that he alone has access to these papers, documents and records, an assertion which has not been contradicted and sounds plausible enough.

In the light of these circumstances, which are only the salient ones, it would seem that the defendant has made a sufficient showing to merit a favorable action on his request as a measure of necessity for an adequate preparation for trial. More than that, since His Honor had

already deigned to grant the accused two and a half hours in one of his orders, this made it so much easier, without endangering the interest of the public, to give him another two hours and a half for which he vigorously pleaded. The refusal to give this additional time, which would not make much, if any, difference to the prosecution, smacks of a market place haggling if not mockery, in that, as the defendant's counsel pointed out, two hours and a half was barely enough to cover the route of travel to and from the accused's home and his office, what with the heavy traffics in Pasay where his home is located and in the Manila commercial districts.

The point made that as the petitioner is imprisoned by virtue of an order of the Philippine Senate his request for "temporary release" from confinement should be addressed to that body, shows at once its inconsistency with the court's order of July 29. As previously seen, by that order the court would grant the petitioner two hours and a half. The fact that this concession was made "only in the interest of justice," as the court puts it, or "only as a privilege to the accused," as the fiscal says, would not erase the inconsistency. Nor would the strings which the prosecution would attach to the permission make it any the less disrespectful to the legislative department or violative of the checks and balance system. If on the other hand by invoking the interest of justice the court would prevent the permission from being a subversion of the Senate's order, then the granting of, say, six hours instead of two and a half in the interest of justice and as a privilege to the accused would clothe the permission with the color of legality.

In reality, however, permission to the defendant to go to his office or home for the purpose indicated would not infringe on the Senate's order of commitment. Such permission is not a release from prison, as the lower court mistakenly assumes; not any more than to bring the defendant to court for trial from Bilibid Prison would be. In their legal and factual connotations, bringing the defendant to court for trial and allowing him to go to his office to get evidence are the same, the same if account is taken of the fact that the latter is part and parcel of the same trial and essential to the defense which has been forced upon the accused by the filing of the accusation. Only hairsplitting technicalities can find any dissimilarity between the two things. It can not be argued without resorting to unreasoning legal niceties that to take a prisoner to Manila, or Zamboanga for that matter, to face trial is not an encroachment on the Senate's prerogatives but that to allow him under guard a few hours to procure evidence from his home or office is an interference with those prerogatives.

Having shown that the two hypotheses are the same, the logical result of the court's theory would be that a prisoner of the Senate charged with criminal offense could not be tried without the Senate's authorization, unless the trial were held in Bilibid Prison, which is outside the court's jurisdiction. Carried to its ultimate conclusion, the theory would mean that a citizen committed to jail by the Senate or the House of Representatives could not be prosecuted in any court of justice unless the corresponding legislative body was willing. (Authority to give permission carries with it authority to refuse.) It should further follow that prosecution for a criminal offense of a prisoner of one of the Houses of Congress would have to wait until the expiration of his sentence if the Senate or house should object. Even if we take for granted that the Senate or the House would always yield to the request, the incongruities would not entirely be eliminated. It should be remembered that unless convoked to a special session, the Congress meets only 100 continuous days a year, so that for eight months during congressional recess there would be no Senate or House to go to for permission. It is a fact, which may have been ignored or overlooked, that such permission if within the congressional power to give or withhold could be granted only by either House acting as a body, and that the Senate President, the Speaker or any legislative committee would have no power to act in the premises for their respective chambers.

One other incongruity that can readily be seen would be that, while the Senators or Members of the House of Representatives themselves are not privileged from arrest and prosecution except in limited cases and during their attendance at the sessions of the Congress and in going to and returning from the same (section 15, article VI of the Constitution), the Congress or either of its component parts could paralyze the machinery of justice and thereby stop for a longer period the prosecution of others for graver offenses.

These anomalous consequences will not be possible if we do not lose sight of the truth that the separation of powers is not rigid and absolute but abstract and general, intended for practical purposes and adapted to common sense. There is no such thing as complete and definite designation by the Constitution of all the particular powers that appertain to each of the several departments. The constitutional structure is a complicated system, and overlappings of governmental functions are recognized, unavoidable, and inherent necessities of governmental coordination. The power itself to punish for contempt which the Senate exercised in sending Arnault to jail, by nature belongs to the judiciary but has been upheld

as a power incidental to or inherent in a deliberative body necessary to its existence and due functioning. The rule is thus expressed in *Corpus Juris Secundum:*

"Although the absolute separation of the powers of government is the theory of American constitutional government, it has never been entirely true in practice, and is no longer an accepted canon among political scientists. The courts recognize that the separation of the powers is far from complete, and that the line of demarkation between them is often indefinite, and it has been held not the purpose of the constitution to make a total separation of these three powers, but that the division of powers is abstract and general, and intended for practical purposes, and a constitutional provision prohibiting the exercise by one department of another's powers does not include all governmental functions or powers. Hence, in practice the departments are not required to be kept entirely distinct without any connection with, or dependence on, each other, and each of the three departments normally exercises powers which are not strictly within its province, and while it is not possible wholly to avoid conflict between them, one department should not so act as to embarrass another in the discharge of respective functions, and the constitution should be expounded to blend the departments no more than it affirmatively requires." (16 C. J. S., 293, 294.)

So any action not amounting to a release of a prisoner committed by the Senate to prison, taken by the executive and the judiciary departments with respect to such prisoner in the legitimate discharge of their respective functions, is not impairment of the doctrine of the distribution of governmental powers. The fact that a person is a prisoner of the Senate or of the House does not, under the principle cited, exclude other departments during his incarceration from trying or investigating him in matters pertaining to their spheres, in much the same way that a prisoner by judgment of a court of justice is not placed beyond the reach of the legislature and the executive to summon for examination and to allow in relation to the investigation to go anywhere under guard to get such evidence as the investigator or the prisoner might deem important.

In the face of the facts here shown to prevail, we are of the opinion that the respondent judge committed an abuse of discretion and prejudicial error in not granting the defendant's motions. By this refusal the defendant would be denied his fundamental right to a fair and impartial hearing which the constitution assures him. Where a request by a defendant charged with crime for a chance to make his defense is reasonable and made in good faith and not for delay, it is good policy to veer towards the liberal side avoiding refinements of argument that may serve only to hide the substance of the issue. It is even of greater importance to the cause of justice for courts to deviate from the stereotyped technical rules of practice and lose a few hours than to run the risk of

depriving accused of the requisite opportunity to present his side of the controversy.

Upon the foregoing consideration, the respondent judge is ordered to grant the petitioner for the purpose hereinbefore stated not less than six hours to visit his home in Pasay City and /or his office on J. Luna Street, Manila, with guards to see, but not more than to see, that the prisoner does not escape or commit any act forbidden by law and the prison rules.

The petitioner's prayer to annul the proceedings heretofore had in the court below is denied, any irregularity committed in those proceedings prejudicial to the rights of the defendant being proper subjects for review on appeal in case of conviction.

There will be no special findings as to costs.

Moran C. J., Ozaeta, Parás, Pablo, and *Reyes, JJ.,* concur.

MONTEMAYOR, *J.,* concurring and dissenting:

In principle I concur in the majority opinion that the petitioner Jean L. Arnault be given an opportunity to prepare for his defense in criminal case No. 12821 in the Court of First Instance of Manila. But I dissent in so far as this court grants him the privilege to visit his home in Pasay City and/or his office in Manila under guard, presumably, to examine his papers and obtain those needed at the trial, without previous consultation with or advice to the Philippine Senate, thereby completely ignoring that legislative body and disregarding its jurisdiction and control over the petitioner.

We should not lose sight of the fact that as the case now stands, the petitioner is not a prisoner of the Court of First Instance of Manila by reason of the information filed against him and his subsequent technical arrest. According to the petition he has already filed the corresponding bond of ₱3,000—recommended by the prosecution and approved by the trial court. Under that bond, he should therefore have been released, at least technically in criminal case No. 12821. If he continues in New Bilibid Prisons under custody, it is by reason of the commitment made by the Senate for contempt. In other words, he is a prisoner of the Senate, a part of the legislative department and not of the judicial department, and in dealing with petitioner in the present certiorari, prohibition and mandamus proceedings, we are dealing with him as such prisoner of the Senate.

The Senate may not prevent his leaving prison to go to the Court of First Instance for arraignment or for trial. The reason is that according to the information in criminal case No. 12821, he has committed an offense against the state and the sovereign, of which the Senate is but a part

and a mere instrumentality. Consequently, the people have a superior right to release him from confinement in prison, temporarily, to go to court and answer the charge of committing a crime against said people and be tried for the same. But in granting the petition herein and ordering the respondent judge to allow him to visit his house and his office for not less than six hours, we are doing something much more than bringing him from prison to the court and back, something which involves judicial discretion. In allowing him to go to his house and his office even under guard, we are exercising jurisdiction and judicial discretion over the prisoner of the Senate, a part of the legislative body, coequal, coordinate and independent branch of the government, as regards his conduct, movements and actions outside of and not strictly necessary to the routine of his going from prison directly to the trial court and back, for arraignment and trial. Under the circumstances, the respondent judge partly shared the idea motivating this partly dissenting opinion when in his order of July 6, 1950 denying the petition of defendant Arnault, he said:

"It appearing that the accused is confined at the New Bilibid Prisons by the Senate, and in so far as this case is concerned he is bonded, it would be improper to grant the motion, because it would be an encroachment on the prerogatives of the Senate; hence, the motion is denied."

I believe that before taking any action in the present case we should consult the Senate or the Senate committee in charge of the investigation of Arnault, at the same time manifesting our opinion that petitioner should be given an opportunity to prepare for trial by allowing him to examine his private papers. The least we could do as a matter of courtesy to the Senate is to advise that body that we are granting the petition, and that the Senate or the committee in charge of the investigation of Arnault may send a representative or representatives to accompany him together with his guards when he goes to his house and/or his office to examine his papers, to see to it that nothing is done by him or on his behalf that may in any way interfere with, frustrate or adversely affect the investigation still being conducted by the Senate.

It is pertinent here to recall that as already stated, Arnault is being held in New Bilibid Prisons under custody as a prisoner of the Senate under a commitment whose validity this tribunal has just recently upheld in a petition for habeas corpus in G. R. No. L–3820. If Arnault had been committed to prison by the Senate for a definite period of imprisonment, say six months, a year or more, and the Senate investigation of him had been terminated, the case might assume a different aspect. In such a case, he would be in Bilibid only undergoing punishment for an offense

committed against one of the houses of the Philippine Legislature. As long as he is under custody and under guard to prevent his escape from confinement and restraint of liberty, the purposes of the Senate in punishing him with imprisonment will be served and accomplished.

The present confinement of Arnault, however, is a little bit if not quite different. The Senate, and its committee is not yet thru with him. He is still under investigation. The committee may call him tomorrow and continue investigating him and asking him questions. He is confined not only as a mere measure of punishment but he is being deprived of liberty for an indefinite term, the length and termination of which lies entirely in his own hands. He may go out tomorrow a free man if he answers certain questions of the Senate or its committee and reveals the identity of the man to whom he had supposedly given the ₱440,000. It is therefore clear that aside from the punishment that he is suffering by his confinement in prison, strong pressure is being brought to bear upon him to do something which is still within his power to do or to perform in exchange for his liberty and freedom from the rigors and hardships and the unpleasant atmosphere of prison life. Any absence from prison, especially going to his office and to his home, meeting his loved ones and friends, renewing old and intimate associations, even for a few hours and seeing once again old and familiar scenes, serve to materially relax that pressure which the Senate is bringing to bear upon him, all calculated to persuade and induce him to comply with the Senate's lawful desire.

But this is not all. Under the custody of prison guards alone whose sole duty and concern is to see to it that he does not escape, things may happen which may not exactly be conducive to the purposes of the Senate in its present and continuing investigation. Without intending any reflection on the petitioner but merely dealing in possibilities and in what people, even honest person may do to defend and protect themselves and their interests, in visiting his home and his office, the petitioner without any supervision might destroy or conceal papers, documents and memoranda which may be useful to the Senate in its investigation and which it may thru lawful process have taken and brought before it in connection with its investigation. Arnault might during that visit do things which he could not otherwise do in prison or during his trip or trips from prison to court and back, things that may in one way or another thwart, frustrate or otherwise adversely affect the investigation being conducted by the Senate committee.

And yet this court thru the majority decision is, not only relaxing the pressure being put by the Senate upon its contumacious prisoner, pressure designed to break

down his resistance but is also opening wide the door to all the possibilities I have partly enumerated, dealing with the prisoner as if he were its own or of the judiciary which he is not, and completely ignoring a co-equal and coordinate branch of the government which made him a prisoner and whose prisoner he continues to be, without even giving notice to said branch of the government so that it may take and suggest precautions and safeguards designed to keep its investigation from being frustrated or nullified. That is why in my opinion, the Senate should be consulted and its voice heard because after all, we are dealing with its prisoner. At least, we should accord the Senate or the Senate committee in charge of the investigation an opportunity to have a representative or representatives accompany the prisoner and be present when he visits his office and his home and examine his papers, so as to properly protect the interest of the Senate in the investigation.

Moreover, in peremptorily and, shall I say, arbitrarily granting the permission to the petitioner, without first seeking the views of the Senate whose prisoner he is, we are treading on dangerous ground. If we can now grant him a minimum of six hours to visit his home and office, we could just as properly grant him twelve hours, or a whole day or more if he really needed it. If we can permit him to visit his office in Manila and his home in Pasay outside of Manila, we could just as well let him go to a nearby province or even farther away, if his office or his house happens to be in that place. It is hard to limit the scope of this judicial discretion now being exercised. During all that period of time and so far removed from the eyes of the court, many things and events, unforeseen and unexpected may happen unknown to us and the Senate. And all the time, we are closing our eyes to the fact that the man we are giving permission to and otherwise dealing with is not our prisoner or of the courts, but a prisoner of the Senate, committed to jail, to stay there until he decides to do something required of him by the Senate who by the way, is still investigating him. And yet we decline to consult said Senate or even advise it of what we are doing or propose to do. That our attitude and position are not entirely proper and tenable, to me is not difficult to see and realize.

It has been intimated that my proposal would mean subservience to the Senate. I beg to differ from that view. Courtesy to a co-equal, coordinate and independent branch of the government and respect for and acknowledgment of its jurisdiction is not subservience. It is only giving to that branch of the government its due. It is by intruding into and encroaching upon the province and jurisdiction of a coordinate branch of the government that we

invite and provoke mutual disrespect and discourtesy. On the other hand, respect and courtesy make for mutuality of the proper feeling and attitude, and for harmony.

For instance, if this high tribunal had committed a person to prison for contempt, to stay there indefinitely until he complied with an order, I at least, if not this court would certainly view with disfavor and disappointment any act on the part of the executive or the legislative department dealing with that prisoner in such a way that it may interfere with or frustrate the purpose of this court in making the commitment, without consultation with or advice to us, and completely ignoring our prerogatives and judicial authority.

In conclusion, while I agree with the majority that petitioner should be allowed a reasonable time and opportunity to visit his home and his office and examine his papers in order to prepare for trial, I believe that before taking action on this matter, the Senate or its committee in charge of the investigation should be consulted and its views and suggestions considered; or at least as a matter of courtesy, said body should be advised of the action being taken by this court in the present petition for certiorari, prohibition and mandamus so as to give such Senate or committee ample opportunity to sent a representative in order to protect its interests.

BENGZON, *J.*, dissenting:

I dissent on three main grounds: (*a*) because the decision fails to render unto the Senate what is the Senate's; (*b*) because it refuses to recognize that constitutional rights of convicts are necessarily curtailed; and (*c*) because petitioner has another adequate remedy.

I. Jean L. Arnault is confined in prison by an order of the Senate for having refused to answer, without cause, a question propounded to him during a properly conducted Congressional investigation. He must be there until he shall have answered that question. Any order permitting him to leave the prison walls to visit his home or office, in effect frustrates the purposes for which he is kept under confinement. It may amount to an unwarranted encroachment upon the prerogatives of the upper branch of Congress as Mr. Justice Montemayor explains at length.

The only instance in which a prisoner held for contempt of a legislative body was allowed to be taken "to testify in court under official custody" occurred in 1870 in the case of Patrick Woods. That was *by virtue of a resolution* of the House of Representatives expressly permitting the trip.[1]

[1] Hinds' Precedents, sec. 1627, Vol. 2.

So jealous is the Congress to preserve its control over the prisoner held for contempt that it even declared "no member (of Congress) had the right to converse with the prisoner at the bar while in custody."[2]

Therefore the most that could be said to petitioner Arnault is that he should seek permission from the Senate or the corresponding committee to perform the acts he would like to perform through court intervention.

The courtesy which our courts should accord to the restrictions imposed on Arnault by the Senate may be compared to the respect which, in the name of duality of jurisdiction, the state courts in the United States accord to incarceration decrees by the Federal courts or vice versa. What is the practice there? Consent of the imprisoning authority is required.

"* * * A federal prisoner may be taken into a state court for trial with the consent of the United States' attorney general, given in his discretion, fairly exercised, provided such removal does not prevent enforcement of the federal sentence or endanger the prisoner. Conversely, a state prisoner may, with the state's consent, be taken into a federal court for trial." (18 C. J. S., 110.)

II. Supposing that Jean L. Arnault may be tried of this criminal offense during his confinement by Senate order, I must admit that he may be removed from jail and brought to court to defend himself. But, when invoking his constitutional right to defense, he demands the privilege to visit other places than the court premises, I certainly draw the line.

No law grants him specifically the right which he invokes: i. e., the right to examine papers in his office to get those he may deem convenient.[3]

An effort is made to spell this right out of the "due process" clause "which includes a fair and impartial trial and reasonable opportunity for preparation of defense." But this court has practically interpreted the requirements of such "due process" by the rules quoted in the footnotes and in none of them do we find recognition of the prisoner's privilege to go out of jail to hunt for witnesses or other documentary evidence. Furthermore—and this is important—we are not dealing here with a mere "accused" person. The petitioner is an accused person *who is a convict of another offense.* A convict's constitutional rights are necessarily curtailed. For instance, as a person he has constitutional right to the pursuit of happiness, and yet as a convict he may not demand the privilege to visit his wife or girl friend even under guard.

[2] Hinds' Precedents, *supra,* sec. 1626.

[3] His legal rights as an accused person have not been denied: two days to prepare for trial, and the rights enumerated in section 1, Rule 111. The right to visit his office and inspect his papers is not vouchsafed to him.

This decision may be a dangerous precedent. Murderers in jail may invoke the same right hoping for chances to escape or only to annoy the government that provides escort and expenses. Probably, the answer will be interposed that the grant is a matter of discretion. Yet once an opening is made, it will be difficult to stem the rush of similar petitions. And the courts' mettle will be sorely tried.

Arnault is in jail as a convict of Senate contempt. He should not leave the prison walls unless it is absolutely necessary. He is brought to court, *because it is absolutely necessary*. Now, *is it necessary* for him personally to go to his office? No, because his friends or relatives or attorneys may do that for him under his instructions. They may even bring to him all his office papers for examination.

III. Our action now seems to be inconsistent with our decision in Arnault *vs.* Nazareno et al. (G. R. No. L–3820, July 18, 1950; 46 Off. Gaz., p. 3100). In that case we practically told Arnault "You have to stay in jail until you answer the question." Now, when he has to answer the question to be able to visit his office, or be at some disadvantage in defending his income tax evasion, we melt and let him leave Muntinglupa, without answering the question. We even overlook the consistent doctrine that these special remedies are granted *only* when the applicant *has no other adequate remedy;* and Arnault, I repeat, *has an adequate remedy*, even two adequate remedies: (first) examine the papers by a friend or relative or bring the papers to prison; and (second) answer the Senate's question, and then repair to this office at pleasure. If he refuses to answer the question, *he deprives himself* of the advantage or privilege which he asks. The courts are not to blame. They are not expected to abet his refusal to answer the Senate's inquiry.

Petition partly granted and partly denied.

[No. L–3027. October 3, 1950]

MARIA L. HERNANDEZ ET AL., plaintiffs and appellees, *vs.* HILARION CLAPIS ET AL., defendants and appellants

1. NOTICE; NOTICE TO BE SENT TO ATTORNEY NOT TO PARTIES; ENTRY OF APPEAL FROM JUSTICE OF THE PEACE AS APPEARANCE IN COURT OF FIRST INSTANCE.—When the attorneys of the parties in the justice of the peace court appealed to the court of first instance, they were considered as attorneys of records to whom notice was properly served. This is so because the entry of appeal by these attorneys from the justice of the peace to the court of first instance was equivalent to the said attorneys' appearance in the higher court. This was in consonance with the spirit of section 7 of Rule 40, with forensic practice, and above all, with realities. They were not only rightly presumed to continue to be attorneys of the defendants but in fact did continue to be so.

2. ID.; ID.; REASON FOR THE RULE.—If the notice had been sent to the defendants personally, these would have good, practical reason to object that their attorneys were the right persons to deal with; the defendants could well say they knew nothing of court procedure. This precisely is one reason for the rule which requires that notices of pleadings, decisions and orders should be served on attorneys instead of their clients.
3. PLEADING AND PRACTICE; PLEADING FILED OUT OF TIME CAN NOT SUSPEND THE RUNNING OF STATUTORY PERIOD.—No pleading registered out of time can suspend the running of a statutory period that has ceased to run.

APPEAL from an order of the Court of First Instance of Davao. Ocampo, J.

The facts are stated in the opinion of the court.

Parreño & Flores and *Kimpo & Espolong* for appellants.
Castillo, Cervantes & Occeña for appellees.

TUASON, *J.:*

This is an appeal from an order of the Court of First Instance of Davao denying a motion to set aside an order of default.

The appellants were defendants in the Justice of the Peace Court of Tagum, Davao, in an action for forcible entry and unlawful detainer, damages, etc., and lost, except as to damages which the justice of the peace said had not been conclusively proved.

In due time, they filed a notice of appeal through Attys. Parreño, Parreño and Flores, their counsel in the justice of the peace court who had their law offices in Bacolod City.

On the 18th of October, 1947, the above-mentioned attorney received from the clerk of the court of first instance notice of the receipt of the record, and were reminded that the period for interposing a demurrer or an answer was to begin from the date of the receipt of said notice. No answer or demurrer was filed.

On November 18, the date for which the case had been set for hearing, Atty. Juan B. Espolong, signing as co-attorney of Emilio B. Parreño, Geronimo R. Flores and Jose M. Kimpo, the first two of whom had been defendants' attorneys in the court of the justice of the peace, filed a written motion to dismiss, alleging, among other grounds, "That, after all, the right to the possession of the property in question is to be determined by such agency of the Government as has been officially entrusted with the disposition of the same." It was stated in effect that the property in question was a so-called dummy land and that the plaintiffs had no interest therein.

In view of the fact that the plaintiffs were furnished with a copy of the above motion to dismiss only on the day the case was to be heard, November 18, their attorneys moved for postponement of the consideration of the said

defendants' motion, and the court reset it for November 27.

On the latter date, the plaintiffs filed a written opposition to the motion to dismiss and asked for continuance of the case on the merits. The plaintiffs' motion to continue the trial was there and then granted.

On December 10, the court denied the defendants' motion to dismiss for want of merit. On the same date the attorneys for the plaintiffs for the first time moved, orally, to adjudge the defendants in default for failure to answer within the period prescribed by the Rules of Court. This motion was found well founded and default judgment was entered.

It is this order which is the subject matter of the present appeal.

Section 1 of Rule 9 and section 7 of Rule 40 of the Rules of Court provide:

"Section 1 (Rule 9). *Time and contents.*—Within fifteen days after service of summons the defendant shall file his answer and serve a copy thereof upon the plaintiff. The answer shall contain a concise statement of the ultimate facts on which he relies for his defense.

"SEC. 7 (Rule 40). *Reproduction of complaint on appeal.*—Upon the docketing of the cause under appeal, the complaint filed in the justice of the peace or municipal court shall be considered reproduced in the court of first instance and it shall be the duty of the clerk of the court to notify the parties of that fact by registered mail, and the period for making an answer shall begin with the date of the receipt of such notice by the defendant."

The defendants and appellants impugn the validity of the notice sent their attorneys in Bacolod City. They contend that such notice should have been sent to the defendants themselves, who were right in Davao. They argue that the attorneys who appeared for them in the justice of the peace court should not have been presumed to be their attorneys in the court of first instance, the justice of the peace court not being a court of record. They point to section 7 of Rule 40 which makes it "the duty of the clerk of court to notify the *parties*." They contend that although, ordinarily, notice to the attorneys is notice to the parties, yet, it is said, that is true only where the attorneys have entered their formal appearance in the court of first instance personally or by their pleadings.

This contention is not well taken. We are of the opinion that notice in this case was properly sent to the attorneys. The entry of appeal by these attorneys from the justice of the peace to the court of first instance was equivalent to the said attorneys' appearance in the higher court. This was in consonance with the spirit of section 7 of Rule 40, with forensic practice, and above all, with realities. They were not only rightly

presumed to continue to be attorneys of the defendants but in fact did continue to be so.

It was Atty. Geronimo R. Flores of the Bacolod City, law firm of Parreño, Parreño and Flores, who filed the answer in the justice of the peace court, handled the defendants' case and filed the appeal. After the case was elevated on appeal he continued acting as counsel for the defendants in the court of first instance, although in the latter court Atty. Espolong of the law firm of Kimpo and Espolong in collaboration with his law partner and with Emilio B. Parreño and Geronimo R. Flores, signed the pleadings alone. And on the front cover of the brief for the defendants-appellants filed with the Supreme Court, "Parreño and Flores" and "Kimpo and Espolong" appear as attorneys for the appellants although Atty. Espolong again signed the brief alone.

In the face of these circumstances, the mailing of the notice to the attorneys was not only correct but *the* proper thing to do. If the notice had been sent to the defendants personally, these would have good, practical reason to object that their attorneys were the right persons to deal with; the defendants could well say they knew nothing of court procedure. This precisely is one reason for the rule which requires that notices of pleadings, decisions and orders should be served on attorneys instead of their clients. And this was the very ground of appeal by the same attorneys in a similar case which will be stated more fully hereafter.

The defendants also submit that, as there was a pending motion to dismiss, and as that motion was denied only on December 10, the period of fifteen days within which demurrer or answer was to be filed commenced to run on that date. The objection to this contention, to mention only one, is that the motion to dismiss was itself filed way beyond the 15-day period to file answer or demurrer. No pleading registered out of time can suspend the running of a statutory period that has ceased to run.

As a last resort it is insinuated that the filing by the plaintiffs of an opposition to the defendants' motion to dismiss was a waiver of their right to ask for a judgment by default. This theory must be overruled, mainly on the ground just stated—that the motion to dismiss had no legal standing. Essentially analogous to this case is that of Mapua *vs.* Mendoza (45 Phil., 424), wherein the court ruled that, "While it is generally irregular to enter judgment by default while a motion remains pending and undisposed of, yet, where such motion is filed out of time, it would not be reversible error to enter a judgment by default."

It is clearly apparent that the whole trouble arose from professional carelessness and negligence. How else

can we characterize the conduct of attorneys who, having conducted the case before the justice of the peace, filed the appeal, and remained to be the attorneys in the court of first instance, failed or refused to make the necessary pleading in the latter court on the tenuous grounds that they and not their clients had been notified of the receipt of the record, record which they themselves had caused to be sent up to the higher court? The least that they should have done, as a measure of protection to their clients, if they were thoroughly convinced that the notice was missent, was to tell the clerk of court so.

But from the argument of defendants' former attorneys in the case before referred to, it does not look as if they were honestly convinced of the soundness of the proposition they now sustain. In that case (Gequiliana *vs.* Buenaventura, G. R. No. L–2134), recently decided by us, Attys. Parreño, Pareriño, Flores and Carreon of Bacolod City, who we presume are the same attorneys, except Carreon, who entered the appeal in the justice of the peace court in the case at bar, stoutly advanced the opposite theory. These attorneys' client, also defendant, was notified by the clerk of court of the receipt of the appeal filed by the plaintiff. The said attorneys contended in connection with their client's failure to file an answer in due time, that the notice was wrongly mailed. In a vigorous brief they said, among other things, "The inevitable conclusion is that under the provision of the law on the subject, upon appeal from the justice of the peace court to the court of first instance, the pleadings filed by the respective parties *in the Justice of the Peace Court* should not be disregarded for they *are the same pleadings* which should be the basis of the cause of action and the basis of the defense of both the plaintiff and the defendant, respectively." They concluded that in accordance with section 2, Rule 27, "(the clerk of court) should have directed the notification required by section 7, Rule 40, of the Rules of Court to the undersigned attorneys who are the attorneys of record for the defendant, as service of the said notification to the defendant, Felipe Buenaventura, in this particular case is not a notification in law which will bind him with all its legal effects." It is an interesting contrast that the defendant in the Gequiliana-Buenaventura case resided in the same province where the attorneys had their law offices and so could easily have communicated with them, whereas the defendants in the present case lived in Davao and were six in number. Apropos of this, it is not shown that these defendants did not live in scattered localities and that their addresses could be verified from the record like that of their attorneys.

There being no merit in the appeal, the order of the lower court will be affirmed, and in view of the circumstances hereinbefore set forth, double costs of this appeal will be imposed, to be assessed against Attys. Parreño, Parreño and Flores jointly and severally.

Moran, C. J., Ozaeta, Parás, Pablo, Bengzon, Montemayor, and *Reyes, JJ.,* concur.

Order affirmed.

[No. L-2332. October 4, 1950]

JOSE R. CRUZ and EMILIA P. CRUZ, plaintiffs and appellants, *vs.* LEONCIO LANSANG, defendant and appellee

1. POSSESSION; VENDEES' RIGHT TO TERMINATE LEASE IF LESSEE FAILS AND REFUSES TO PAY RENTS.—Vendees who had never been in possession of property have right to terminate the lease thereon if the lessee fails or refuses to pay the rents and especially when the vendees are in need of the premises for their own use.
2. UNLAWFUL DETAINER; DEFENDANT'S CLAIM OF TITLE IN ANOTHER ACTION DOES NOT DIVEST JURISDICTION OF MUNICIPAL COURT.—A defendant's claim of title in another action pending in a superior court does not divest the municipal court of its jurisdiction to award possession to vendees with certificate of title and until the defendant succeeds in such venture to show that vendees' title is null and void, the courts will in the meantime respect the vendees' title and allow them to exercise their rights as such owners, including possession of the property as against a mere occupant whose alleged title still remains to be proven.

APPEAL from a judgment of the Court of First Instance of Manila. Barrios, J.

The facts are stated in the opinion of the court.

Tomas P. Panganiban and *S. Megia-Panganiban* for appellants.

Sison, Aruego & Esteban for appellees.

MONTEMAYOR, *J.:*

The present case here on appeal had its origin in civil case No. 3262 of the Municipal Court of Manila, wherein Jose R. Cruz and his wife Emilia P. Cruz brought action for ejectment against Leoncio Lansang to oust him from lots Nos. 1118 and 1120 and the two houses constructed thereon, in Kundiman street, Sampaloc, Manila. The facts necessary for the determination of this case as may be gathered from the record may be briefly stated as follows:

It would appear that Leoncio Lansang and his wife Nicolasa Miranda were, formerly, owners of these two lots in question under transfer certificates of title Nos. 55598 and 66933. By virtue of a deed of sale executed by the couple on January 14, 1944, they transferred and

sold these two lots and the houses thereon to two Chinese nationals Ng Han Kiat and Dy Hoe. The deed was filed for record in the office of the register of deeds on January 25, 1944 under entry No. 10738. On November 16, 1946, the two vendees Ng Han Kiat and Dy Hoe sold the same lots to Jose R. Cruz and his wife Emilia P. Cruz. Because the register of deeds doubted the right of the two Chinese nationals to buy real property in the Philippines, he did not issue to them the corresponding transfer certificates of title on the basis of the sale to them by Lansang and his wife. So, the last vendees Cruz and his wife in order to complete the chain of title, petitioned the court of first instance (4th branch) in G. L. R. O. Rec. No. 11546, to direct the register of deeds to issue to them the corresponding transfer certificates of title on the basis of the sale made to them by the two Chinese nationals notwithstanding the fact that their vendors, the said Chinese nationals had no transfer certificates of title in their favor. The court of first instance granted their request and directed the Register of Deeds of Manila to annotate and record the deed of sale by Lansang and his wife in favor of the two Chinese nationals, object of Entry No. 10738, but without issuing new transfer certificates of title, and then annotate and record the deed of sale by Ng Han Kiat and Dy Hoe in favor of Jose R. Cruz and Emilia O. Pañganiban. As a result, Cruz and his wife now have transfer certificates of title Nos. 6090 and 6091 (Exhibits A and B) to evidence their ownership of these two lots.

In the municipal court, Lansang claimed he had never been a tenant of Cruz and his wife; that he was still the owner of the two lots in litigation and therefore may not be ousted therefrom; that he never sold these two lots to the two Chinese nationals but had merely mortgaged them; that the subsequent transfer of said properties to Cruz and his wife was illegal and fraudulent; and that he had filed in the Court of First Instance of Manila, civil case No. 1620 seeking to cancel the alleged mortgage of the two lots.

After hearing, the municipal court rendered judgment in favor of Cruz and his wife and ordered Lansang and all others claiming under him to vacate the premises and to pay to the plaintiffs the rentals in arrears from November 16, 1946 until the premises were restored to said plaintiffs, at the rate of ₱60 a month.

Lansang appealed the case to the court of first instance and in that court he reiterated his claim of ownership over the two properties. Said court after receiving evidence, rendered judgment in favor of the defendant, Lansang, absolving him from the complaint. Cruz and his wife are now appealing from that decision.

In its decision the court of first instance found that according to Exhibits A and B, the transfer certificates of title Nos. 6090 and 6091, appellants Cruz and his wife were the owners of the two lots in question but it also found that Cruz and his wife were never in possession of these two lots nor of the two houses thereon, and apparently on that basis alone, it ruled that they had no right to oust Lansang from the premises.

The trial court erred in making this finding regarding lack of possession by Cruz because the evidence shows and even Lansang himself admits that since the year 1945, Cruz and his wife had been occupying the upper story of the house on lot No. 1118 and had been paying the corresponding monthly rentals to the two Chinese nationals who later sold the two lots to them. But even if Cruz and his wife had never been in possession, as vendees of the property they had a right to terminate the lease of the two lots in favor of Lansang not only because the latter had deliberately failed and refused to pay the corresponding rents, but also because Cruz and his wife needed the premises for their own use.

The claim of title made by Lansang did not divest the municipal court of jurisdiction; neither did it prevent Cruz and his wife from exercising their rights as alleged vendees and owners of the property from getting the possession thereof. As far as title to the property is concerned, they have all the presumptions in their favor. The record of the register of deeds shows as already stated, that these two lots had been sold and disposed of by Lansang and his wife, and by a subsequent deed Cruz and his wife had acquired title thereto and now they have the corresponding transfer certificates of title. It still remains for Lansang to prove in the civil case he has instituted in the Court of First Instance of Manila that the transaction had between him and his wife on one side and the two Chinese nationals on the other, was only a mortgage and not a sale. Until he succeeds in this venture and proves that the title of Cruz and his wife is null and void, the courts will in the meantime respect said title possessed by Cruz and Mrs. Cruz and allow them to exercise their rights as such owners, including possession of the property as against a mere occupant like Lansang whose alleged title still remains to be proven.

In view of the foregoing, the decision of the Court of First Instance of Manila is hereby reversed. Judgment is rendered in favor of the plaintiffs-appellants Jose R. Cruz and Emilia P. Cruz and defendant-appellee Lansang and all others claiming ownership under him are hereby ordered to vacate the premises in question and to pay to the appellants rentals at the rate of ₱60 a month from November 16, 1946 until said premises shall have

been restored to the possession of the appellants. Lansang will pay costs in both instances.

Ozaeta, Bengzon, Tuason, and *Reyes, JJ.,* concur.

MORAN, *C. J.:*

I concur in the result. The Krivenko ruling is not involved here. The property is at present in the hands of Filipino citizens.

PABLO, *M.,* disidente:

En 14 de enero de 1944 Leoncio Lansang vendió dos lotes en Manila con sus mejoras bajo certificados de transferencia de título Nos. 55598 y 66933, a Ng Han Kiat y Dy Hoe, ciudadanos chinos. Estos los vendieron en 16 de noviembre de 1946 a los demandantes José R. Cruz y señora. Si la primera venta, ya bajo la constitución del Commonwealth, ya bajo la constitución aprobada bajo el régimen japonés, es nula y de ningún valor, cómo podían los dos chinos venderlos válidamente a los hoy demandantes? Y si éstos no han podido legalmente adquirir la propiedad de los lotes tampoco han podido obtener su posesión. La pretensión de que tienen derecho a poseer los terrenos en virtud de la compra es insostenible. Cómo pueden reclamar con éxito ante nuestros tribunales el lanzamiento de Leoncio Lansang, que es el dueño y poseedor actual de los mismos?

Se dice que solamente el Estado puede reclamar la nulidad de la venta. Eso tal vez esté bien en algunos estados de América en cuanto a la adquisición por un extranjero de un terreno público. Pero en Filipinas, la parte interesada, y no el Estado, (Pindangan Agricultural Co., Inc. *contra* Schenkel, et al., G. R. No. 46798, prom. Abril 30, 1949) debe suscitar la declaración judicial de que la venta a un extranjero de un terreno de propiedad privada es nula. (Regla 3, art. 2.)

En mi opinión, la causa debe sobreseerse.

Judgment reversed.

[No. L-2533. Octubre 10, 1950]

MARÍA PACHECO VDA. DE YULO Y OTRO, demandantes y apelados, *contra* CHUA CHUCO, MÁXIMO P. GONZÁLES y LUIS AMADOR, demandados y apelantes.

1. SENTENCIAS; REVOCACIÓN POR ALGUNO DE LOS MOTIVOS BAJO LA REGLA 38; PRÁCTICA ESTABLECIDA.—Es práctica establecida en esta jurisdicción la de no ordenar la revocación de una orden o decisión por alguno de los motivos especificados en los artículos 2 y 3 de la Regla 38, a menos que el recurrente demuestre que tiene buena causa de acción, si es demandante, o buena defensa, si es demandado. Y la razón es sencilla: sería perder el tiempo inútilmente reabriendo el juicio si, después de todo, la demanda es infundada o la defensa ineficaz.

2. VISTA; APLAZAMIENTO DE LA VISTA; DERECHO DE LOS DEMANDANTES O DEMANDADOS.—Es cierto que no era de estricto derecho de los demandados el que el Juzgado les concediese aplazamiento de la vista, pero teniendo en cuenta que el mismo había concedido tal privilegio a los demandantes sin ninguna moción presentada debidamente y con buen fundamento, los demandados estaban en cierto modo justificados al creer que su petición, fundada en la enfermedad del abogado R, había de ser considerada con la misma liberalidad con que lo fué la petición de los demandantes.

3. FIADORES Y FIANZA; PRÓRROGA CONCEDIDA POR EL ACREEDOR SIN CONSENTIMIENTO DEL FIADOR.—La prórroga concedida al deudor por el acreedor sin el consentimiento del fiador extingue la fianza.

APELACIÓN contra una sentencia del Juzgado de Primera Instancia de Iloílo. Barrios, J.

Los hechos aparecen relacionados en la decisión del Tribunal.

Sres. Cirilo Abrasia, Vicente T. Remitio, Carlos Hilado y José V. Coruña y Sres. Padilla, Carlos y Fernando en representación de los apelantes.

Sres. Claro P. Gasendo y *Ramón T. Obén* en representación de los apelados.

PABLO, *M.:*

Trátase de una apelación contra una decisión del Juzgado de Primera Instancia de Iloílo.

Los apelantes sostienen que el Juzgado *a quo* cometió tres errores, a saber: 1.°, al denegar su moción que pide, bajo la Regla No. 38, que se revocase la sentencia y se les concediese nueva vista; 2.°, al no declarar que los apelantes han sido relevados ya de su obligación como fiadores del finado Lucio Echaus; y 3.°, al condenarles a pagar la suma de ₱13,500, mancomunada y solidariamente, con un interés de nueve por ciento, y costas.

Es práctica establecida en esta jurisdicción la de no ordenar la revocación de una orden o decisión por alguno de los motivos especificados en los artículos 2 y 3 de la Regla 38, a menos que el recurrente demuestre que tiene buena causa de acción, si es demandante, o buena defensa, si es demandado. (Paz *contra* Inandan, 42 O. Gaz., 714; Daipan *contra* Sigabu, 25 (Jur. Fil., 188.) Y la razón es sencilla: sería perder el tiempo inútilmente reabriendo el juicio si, después de todo, la demanda es infundada o la defensa ineficaz.

Para la mejor comprensión del asunto reproduciremos las conclusiones de hecho de la sentencia apelada, que son del tenor siguiente:

"Consta en la demanda jurada por la demandante María Pacheco Vda. de Yulo, que la Philippine Trust Co. presentó ante este Juzgado la demanda civil No. 7914 contra el finado Lucio Echaus, pidiendo que se le devolviera la posesión de cierto edificio situado en la ciudad de Iloílo; visto el asunto, el Juzgado falló a favor de la deman-

dante Philippine Tust Co., contra cuyo fallo el demandado Lucio Echaus apeló. Antes de perfeccionarse la pieza de excepciones Lucio Echaus, como obligado principal, y José Yulo y Regalado, Chua Choco, Máximo P. Gonzáles y Luís Amador como fiadores, prestaron una fianza para la suspensión de la ejecución de la sentencia recaída en el referido asunto (Exhíbito A), por lo que se comprometieron y obligaron a cumplir fielmente la sentencia y pago de las costas en el caso de su confirmación, hasta la suma de ₱18,000.00, ofreciendo dichos fiadores como garantía las propiedades descritas en el mismo documento, ratificado ante el Juez de Paz del municipio de Hinigarán, Negros Occidental, Sr. Rafael Divino; la decisión dictada por este Juzgado en el mencionado asunto civil No. 7914, ha sido confirmada en todas sus partes por la Hon. Corte Suprema, condenando al demandado Lucio Echaus a pagar a la demandante Philippine Trust Co. la suma de ₱18,000. En vista de la incapacidad de Lucio Echaus de efectuar el pago del importe de la sentencia contra él en la ya mencionada causa civil No. 7914, y ante las amenazas de la Philippine Trust Co. de proceder civilmente contra Don José Yulo y Regalado que, entre los fiadores de dicho Lucio Echaus, era el más solvente, el citado José Yulo y Regalado, con el objeto de retardar la acción que la Philippine Trust Co. le amenazaba con presentar contra él como fiador mancomunado y solidario, se vió obligado a suscribir y firmar, como en efecto suscribió y firmó juntamente con Lucio Echaus, un pagaré y una escritura en los que ambos se comprometieron y obligaron a pagar mancomunada y solidariamente a la misma Philippine Trust Co. la suma de ₱18,000 en los plazos mencionados en dichos documentos (Exhíbito B). Que después del otorgamiento de la escritura anexo B (Exhíbito B), Lucio Echaus falleció en la ciudad de Iloílo en estado casi insolvente y, no habiendo podido satisfacer en vida el pago de su obligación ya tantas veces mencionada a la Philippine Trust Co., ésta última presentó ante el Honorable Juzgado de Primera Instancia de Negros Occidental una demanda contra Alejandro Echaus, en su capacidad como administrador judicial de dicho Lucio Echaus, para la ejecución de la hipoteca constituída en el anexo B, y se registró como asunto civil No. 6345 de dicho Juzgado. Con fecha 6 de diciembre de 1935, el Juzgado de Primera Instancia de Negros Occidental dictó decisión en la referida causa civil No. 6345 condenando al allí demandado Alejandro Echaus, en su ya antedicha capacidad, a pagar a la demandante Philippine Trust Co. la suma de ₱18,000 con sus intereses a razón del 9% anual a partir desde el 13 de octubre de 1931 hasta su completo pago, más una suma adicional de ₱3,500 como honorarios de abogado y las costas, disponiéndose además, en la decisión que si Alejandro Echaus no verificaba el pago de dichas cantidades dentro de noventa días, que se vendiesen en pública subasta con arreglo a la ley el lote No. 2008 del catastro de Hinigarán, Negros Occidental, que se hipotecó a la Philippine Trust Co. según el anexo B de la demanda. Que el valor real del lote 2008 arriba mencionado era ₱500 y, no teniendo el intestado de Lucio Echaus ninguna otra propiedad susceptible de ejecución, dicha entidad requirió con más insistencia al hoy finado José Yulo y Regalado que pagase dichas cantidadas bajo la amenaza de que si así no lo hiciera la Philippine Trust Co. iba a presentar contra él una demanda ante los Tribunales, requerimientos y amenaza que se repitieron contra la aquí demandante, María Pacheco al fallecimiento de su esposo Don José Yulo y Ragalada. Con fecha 7 de septiembre de 1935, la aquí demandante María Pacheco Vda. de Yulo promovió el abintestato de su nombrado esposo Don José Yulo y Regalado ante este Juzgado, el cual nombró a dicha demandante como administradora judicial de los bienes relictos de aquel el mismo día. Que hacia el mes de octubre de 1935 la Philippine Trust Co. presentó ante los comisionados

de reclamación y avalúo nombrados en el abintestato del finado Don José Yulo y Regalado una reclamación para el pago de las cantidades mencionadas en el anexo E de la demanda que, en vida, el finado Don José Yulo y Regalado no pudo solventar. Que ante estas circunstancias y no habiendo manera legal de evadir el pago de dichas cantidades, y, por otro lado, no disponiendo entonces de fondos suficientes para efectuar dicho pago, la aquí demandante María P. Vda. de Yulo en su capacidad como administradora del abintestato de su esposo y con autorización de este Juzgado, a requerimiento de la Philippine Trust Co. tuvo que otorgar a favor de esta última una escritura en la que ella se comprometió a pagar a dicha Philippine Trust Co. la suma de ₱23,500 de la forma y en los plazos especificados en dicha escritura, una copia de la cual se adjunta también a la demanda, anexo C. Que en la escritura anexo C, la demandante María P. Vda. de Yulo asímismo traspasó en primera hipoteca a favor de la Philippine Trust Co. el lote No. 534 de la medición catastral de Isabela, Negros Occidental, para garantizar el pago de la referida suma de ₱23,500, cuyo lote correspondió en mancomún a las menores Concepción, Alicia y Herminia apellidadas Yulo, según el proyecto de partición y adjudicación de los bienes de su difunto padre Don José Yulo y Regalado debidamente aprobado por este Juzgado, en cuyo proyecto de partición las aquí demandantes respetaron y se comprometieron a pagar en la misma proporción que entre ellas se repartieron los bienes del finado Don José Yulo y Regalado la ya mencionada obligación a la Philippine Trust Co., o sea, una quinta parte (1/5) a la demandante María P. Vda. de Yulo y cuatro quintas partes (4/5) a sus nombradas hijas. Que hasta este momento las demandantes han pagado ya de su propio peculio a la Philippine Trust Co. la suma total de ₱11,011.70 a cuenta de la suma de ₱23,500 y sus intereses mencionados en la escritura Anexo C, y por virtud de esta escritura dichas demandantes necesaria y legalmente tendrán que pagar el resto de la obligación, o sea, la suma de ₱16,150 so pena perder el lote No. 534 allí hipotecado a la Philippine Trust Co., que vale no menos de ₱40,000. Que a pesar de los requerimientos hechos al efecto por las demandantes, los aquí demandados se han negado y continúan negándose a pagar a dichas demandantes o a la Philippine Trust Co. lo que ellos debían pagar, o sean tres cuartes partes (3/4) de la suma de ₱23,500 y sus intereses pactados en el anexo C de la demanda o la suma de ₱17,625."

La vista de esta causa estaba señalada para el 9 de julio de 1940, pero los abogados de los demandantes enviaron el día anterior a cada uno de los abogados de los demandados un telegrama del tenor siguiente: "Por mi gestión escribano canceló vista Yulo no venga martes." Por tal gestión, el juzgado transfirió la vista al 14 de octubre.

Desde Bacolod, Negros Occidental, donde tiene su bufete, el abogado de Luis Amador, Sr. Vicente T. Remitio, envió al Escribano, el 12 de octubre, un telegrama del tenor siguiente:

Bacolod City, October 12, 1940

"The Clerk of Court
"Iloilo Court of First Instance
"Iloilo, Iloilo

"Just recovered trancaso requesting postponement trial civil number eleven six hundred fifty one Soriano Hilado Abrasia notified.

(Sgd.) "VICENTE T. REMITIO"

Dió cuenta también de esta petición por telegrama a los abogados de los otros demandados Chua Chuco y Máximo P. Gonzáles, por lo cual ninguno de los demandados ni sus abogados comparecieron en el día de la vista. El Juzgado, desatendiendo la petición de aplazamiento, oyó las pruebas de los demandantes y dictó su decisión, parte de la cual ya está transcrita.

Dentro del período reglamentario, los demandados, por medio de sus respectivos abogados, presentaron su respectiva moción citando la razón de su incomparecencia en la vista, y alegando que tienen válida defensa, pidieron la revocación de la sentencia y la concesión de nueva vista de acuerdo con la Regla 38.

Los demandantes se opusieron por dos motivos: 1.º, que las mociones no estaban juradas, y 2.º, que las razones alegadas eran frívolas y carecen de mérito. Es verdad que la moción presentada por Chua Chuco no estaba jurada, pero las presentadas por Luis Amador y Máximo P. Gonzáles lo están. Con todo, el Juzgado las desentimó.

Es cierto que no era de estricto derecho de los demandados el que el Juzgado les concediese aplazamiento de la vista, pero teniendo en cuenta que el mismo había concedido tal privilegio a los demandantes sin ninguna moción presentada debidamente y con buen fundamento, los demandados estaban en cierto modo justificados al creer que su petición, fundada en la enfermedad del abogado Remitio, había de ser considerada con la misma liberalidad con que lo fué la petición de los demandantes.

Las contestaciones presentadas por los demandados, además de hacer una negación general, alegan en su defensa que su obligación como fiadores de acuerdo con el Anexo "A" de la demanda, ha quedado completamente extinguida.

Por medio de la fianza Anexo "A" los demandados Chua Chuco, Máximo P. Gonzáles y Luis Amador juntamente con José Yulo y Regalado se constituyeron en fiadores de Lucio Echaus para asegurar el "pago de la sentencia apelada y costas en el caso de que fuere confirmada total o parcialmente" por la cantidad de ₱18,000 a favor de la Philippine Trust Co. El párrafo de la escritura de hipoteca, Anexo "B" de la demanda, otorgada por el deudor principal Lucio Echaus y José Yulo y Regalado, es del tenor siguiente:

> Esta hipoteca se otorga por dichos deudores hipotecarios en garantía del pago a dicha acreedora hipotecaria de la suma de diez y ocho mil pesos (₱18,000.00), moneda filipina, importe de un pagaré librado por los mismos, y del cumplimiento de todas las condiciones estipuladas en esta escritura y en dicho pagaré que copiado es como sigue:
>
> "₱18,000.00 Iloílo, I. F. marzo 11, 1931.
>
> "Por valor recibido, pagaremos, mancomunada y solidariamente a la orden de la Philippine Trust Company en su oficina en la ciudad de Manila, I. F., la suma de diez y ocho mil

pesos (₱18,000.00), moneda filipina, en los plazos y cantidades siguientes:

₱4,000 en abril 30, 1931;
₱4,000 en mayo 31, 1931;
₱5,000 en mayo 31, 1932;
₱5,000 en mayo 31, 1933;

con los intereses a razón de 9 por ciento anual desde esta fecha hasta su pago pagaderos anualmente sobre cualquier saldo no satisfecho de este pagaré."

La Philippine Trust Co. exigió el otorgamiento de la escritura de hipoteca Anexo "B" en lugar de la fianza, Anexo "A"; que en vez de exigir el pago inmediato de la cantidad de ₱18,000, después de confirmada por el Tribunal Supremo la sentencia del Juzgado de Primera Instancia, la Philippine Trust Co. concedió al deudor Lucio Echaus cuatro plazos de pago con intereses de 9 por ciento, claúsula de aceleración, acumulación de intereses al capital debido y honorarios de abogado. Las dos escrituras de fianza y de hipoteca no pueden subsistir al mismo tiempo: si estuviesen en vigor a la vez, la Philippine Trust Co. tendría un crédito de ₱36,000, y no ₱18,000 solamente. Son incompatibles. (Abel *contra* De Lima y otro, G. R. No. L–2374, septiembre 21, 1950.) Es evidente que el Anexo "B" sustituyó al Anexo "A" por exigencias de la Philippine Trust Co., porque, como dice la sentencia apelada, "D. José Yulo y Regalado era el más solvente entre los fiadores de Lucio Echaus," y que Lucio Echaus suscribió y firmó el Anexo "B" para "retardar la acción" de la Philippine Trust Co. (Palabras textuales de la sentencia.) Hubo, pues, novación de contrato. El artículo 1851 del Código Civil dispone que "La prórroga concedida al deudor por el acreedor sin el consentimiento del fiador extingue la fianza."

Habiendo quedado inútil la acción de ejecución hipoteca (Anexo "B") contra el administrador de los bienes intestados del deudor principal Lucio Echaus que no había dejado más que una finca que valía ₱500, la acreedora Philippine Trust Co. dirigió sus requerimientos contra la viuda del finado José Yulo y Regalado, y como ésta no tenía otra alternativa otorgó con autorización del Juzgado de Testamentaría la escritura de hipoteca de 9 de junio de 1936, Anexo "C", por la cantidad de ₱23,500 (que es la suma total de la antigua deuda de ₱18,000 con sus intereses vencidos), pagadera en seis plazos. De esta cantidad la administradora y herederas del finado José Yulo y Regalado han pagado ya a la Philippine Trust Co. la suma de ₱11,011.70 y la viuda y sus hijas, como herederas del finado José Yulo y Regalado, piden que los tres demandados paguen las tres cuartas partes de la suma de ₱23,500 con sus intereses, o sea, la suma de ₱17,625.

Es insostenible esta pretención porque los apelantes Chua Chuco, Luís Amador y Máximo P. Gonzáles no han tenido intervención alguna en el otorgamiento de la escritura de

hipoteca Anexo "C" de la demanda, ni aparece que lo hayan consentido. Si el difunto José Yulo y Regalado hubiera pagado a la Philippine Trust Co. la suma de ₱18,000 como fiador, de acuerdo con los términos del Anexo A después de confirmada la sentencia, sus herederos tendrían derecho de repetir contra los tres demandados, apelantes hoy, su parte proporcional de tres cuartas partes de ₱18,000; pero no las tres cuartas partes de la cantidad de ₱23,500, que es una obligación pura y sencilla de la administradora de los bienes intestados del finado José Yulo y Regalado.

La mayoría opina que la incomparecencia de los demandados era excusable y que al parecer tienen buena defensa.

En opinión personal del que prepara esta decisión, la obligación de los tres apelantes (como fiadores en el Anexo A) ha quedado extinguida, a falta de prueba de su consentimiento en la prórroga del pago de la obligación. Deben ser absueltos.

Se revoca la decisión apelada y se concede nueva vista. Los apelados pagarán las costas.

Ozaeta, Parás, Bengzon, Tuason, Montemayor, y *Reyes, MM.*, están conformes.

MORAN, *Pres.*, concurrente y disidente:

Por las razones mismas expresadas por la mayoría en su decisión, yo creo que lo procedente es revocar la sentencia apelada con absolución de los demandados, y no simplemente concederles nueva vista. Aun admitiendo que el juzgado inferior erróneamente ha celebrado la vista a espaldas de los demandados, y, por consiguiente, éstos tienen derecho al remedio establecido en la Regla 38 de los Reglamentos, si al mismo tiempo queda demostrado por las pruebas mismas aportadas por los demandantes que ellos no tienen motivo de acción contra los demandados, lo más correcto es dar fin al asunto mediante la absolución de los demandados y no simplemente concederles nueva vista.

Teniendo en cuenta los hechos relatados en la decisión apelada que está transcrita en la decisión de la mayoría, queda claro que los contratos celebrados por los demandados quedaron novados y por consiguiente ellos quedaron liberados de su obligación. No aparece, según la decisión de la mayoría que los demandados hayan consentido esa novación. Creo que sin necesidad de nueva vista debe dictarse sentencia en el fondo absolviendo a los demandados.

Se revoca la sentencia y se concede nueva vista.

[No. L–1724. October 12, 1950]

NIEVES VDA. DE GONZALEZ MONDRAGON, plaintiff and appellant, *vs.* ROMAN SANTOS, defendant and appellee

1. CONTRACTS; RESCISSION; DEGREE OF PROOF NECESSARY.—Contracts solemnly and deliberately entered into may not be overturned by inconclusive proof or by reason of mistakes of one of the parties to which the other in no way has contributed.

2. ID.; ID.; ID.—"Relief by way of reformation of a written agreement will not be granted unless the proof of *mutual mistake* is of the *clearest* and *most satisfactory* character. The amount of evidence necessary to sustain a prayer for relief where it is sought to impugn a fact in a document is always *more than a mere preponderance* of the evidence."

3. ID.; PARTIES TO A CONTRACT ARE BOUND BY ITS TERMS TO MINIMIZE LITIGATIONS.—The law abhors law suits, and litigations would be fostered if contracts of sale were to be overturned on slight or uncertain evidence. The only way in which such litigations could be minimized if not entirely prevented is by holding the parties conclusively bound by the terms of the agreement as expressed in the writing, unless the contrary is shown by clear proof.

4. PURCHASE AND SALE; FACTS SHOW THAT SALE IS BY LUMP SALE.—In a sale involving an extensive agricultural estate containing undetermined lots of different classes, unappraised improvements, barrio lots and roads and standing crop, it was well-nigh difficult, not to say impossible, to conclude a transaction technically and strictly by the hectare. Such form of sale would leave the parties in uncertainty on the amount to be added to or taken from the price in the ensuing readjustment in the event of discrepancy in the assumed area. Such form of sale would be fraught, as the parties ought to have realized, with extreme difficulties and harrassing controversies.

5. ID.; CONSTRUCTION OF CONTRACT; INTENTION AS REVEALED IN THE DEED OF SALE AS CONVEYANCE BY LUMP SUM.—The recital in the deed of sale, that the vendors conveyed "todo su derecho, interés, y participación en la Hacienda Esperanza," literally and properly construed, was a conveyance of the whole estate in the property in the absence of any limitations denoting intent to convey a less interest.

APPEAL from a judgment of the Court of First Instance of Manila. De Leon, J.

The facts are stated in the opinion of the court.

Vicente J. Francisco for appellant.
Sixto de la Costa and *Severiano B. Orlina* for appellee.

TUASON, *J.:*

This action was commenced in the Court of First Instance of Manila, to rescind a deed of sale, Annex A, and to sentence the defendant to execute a deed of reconveyance of the land sold and to deliver to the plaintiff 15,000 cavanes of palay, or to pay the value thereof, for every crop year beginning 1941–42. It was further prayed "that for the restitution of that part of the selling price received by the plaintiff under the deed of sale, Exhibit A, the court fix such reasonable amount in present legal tender as would be equitable or legal equivalent of ₱454,789.79 in Japanese military notes." As an alternative to rescission, it was prayed that the defendant be ordered to pay the plaintiff ₱35,921.27 with legal interest from the date of the filing of the original complaint until fully paid.

After the trial was closed the plaintiff filed a third amended complaint, in conformity with the evidence adduced, to recover other parcels which, it was alleged,

were not included in the contract but had been taken possession of by the defendant.

It is not necessary to detail the facts. The following highlights of the case will suffice as convenient background for this decision.

It appears that Don Joaquin Gonzalez Mondragon, who died on December 16, 1940 in Manila, left a large tract of land known as Hacienda Esperanza, situated in three municipalities of Pangasinan and covered by five certificates of titles. The deceased had executed a will and codicil in which he provided for the distribution and disposition of his estate among his widow, Doña Nieves Balmori Vda. de Gonzalez Mondragon, the plaintiff herein, and various children. To his widow, the testator devised 33/34 of the hacienda, among other legacies.

In 1941, the widow and her children made a partition of the inheritance, allotting to each heir separate and specific portions but leaving pro-indiviso the residential lots and roads in the barrios situated within the estate. They employed a surveyor, and a sub-division plan, introduced in evidence as Exhibit 10, was drawn, on which the area of the widow's approximately one-third share was stated to be 1,023 hectares.

Subsequent to the partition, negotiations were started, or resumed, for the purchase by Don Roman Santos, the defendant, of the plaintiff's share and those of her children who were willing to sell. Offers and counter-offers were made until, finally, the parties closed the deal and executed the deed Exhibit A or 1 on August 5, 1941. The pertinent provisions of the deed read:

"Nosotros, Nieves Balmori Vda. de González Mondragón, Joaquín P. González, casado con Filomena Pacheco, Esperanza González, casada con Marcel Peyronnet, Róberto V. González, casado con Katherine C. McCraken, Enrique F. González, casado con Luisa Tapales, Asunción H. González, casado con Cristina Soriano, Antonio F. González, casado con Mercedes Ugarte, y Remedios González, casado con Thomas O'Brien, todos los cuales son mayores de edad, residentes en la ciudad de Manila y ciudadanos filipinos, con excepción de Esperanza y Remedios González, que por razón de matrimonio son, respectivamente, de ciudadania francesa y americana, más adelante designados como los Vendedores, en consideración de la suma total de ₱943,500 de la cual ₱460,000 corresponden a Nieves B. Vda. de González Mondragón, ₱61,000 a cada uno de los Vendedores Vicente, Antonio y Remedios González, ₱60,000 a, Joaquín González, Enrique y Asunción González, cùyo precio será pagadero en los términos que mas adelante se especifican, hacemos constar por la presente que vendemos, cedemos y traspasamos, en absoluto y a perpetuidad, a Román Santos, casado con Juliana Andres, filipino y residente en el municipio de Navotas, provincia de Rizal, mas adelante designado como el Comprador, todo su derecho, interés y participación en la Hacienda Esperanza, ubicada en los municipios de Umingan, San Quintin y Santa María, de la provincia de Pangasinán, con todos sus edificios, mejoras y pertenencias, incluyendo toda la cosecha no levantada y semillas exis-

tentes en la Hacienda, todo el ajuar de la Casa-Hacienda de la propiedad de la Vendedora Nieves B. Vda. de González Mondragón, el truck Ford, y la planta eléctrica, todo libre de carga y gravamen, excepto como aqui se especifica más adelante."

Sometime after the sale, a new survey was made and the new plan gave the area of the plaintiff's approximately one-third share of the hacienda as 1,091.24 instead of 1,023.

It was the restoration of the difference between these two figures or the payment of its equivalent in cash that the first complaint was filed, it being alleged that the plaintiff had sold her land on the basis of ₱450 per hectare. Explaining why she signed the deed without objecting to the form in which it was written, the plaintiff declared that she did not read the document because she was then sick suffering from a heart ailment. The defendant countered with the allegation that he bought all the plaintiff's right and interest to and in the hacienda for a lump sum and not for a specified price for each hectare, as the plaintiff claims.

The last preceding paragraph states in a nutshell the pivotal issue, the resolution of which will decide the rest, except the question as to the inclusion or non-inclusion in the sale of lot No. 4397–A and barrio lots and roads, which question will be taken up separately.

Article 1469 and article 1471, first paragraph, of the Civil Code read:

"ART. 1469. The obligation to deliver the thing sold includes that of placing in the control of the vendee all that is mentioned in the contract, according to the following rules:

"If the sale of immovable property should be made with a statement of its area, at the rate of a certain price for a unit of measure or number, the vendor shall be obliged to deliver to the vendee, if the latter should require it, all that may have been mentioned in the contract; but, should this be not possible, the vendee may choose between a proportional reduction of the price or the rescission of the contract, provided that, in the latter case, the decrease in the area be not less than one-tenth of that attributed to the immovable.

"The same shall be done, even when the area is the same, if any part of the immovable is not of the quality stated in the contract.

"The rescission, in this case, shall only take place at the will of the vendee, when the inferior value of the thing sold exceeds one-tenth of the price agreed upon.

"ART. 1471. In the sale of an immovable, made for a lump sum and not at the rate of a certain sum for a unit of measure or number, there shall be no increase or decrease of the same, although there be a greater or less area or number than that stated in the contract."

It is admitted that if the contract is to be construed by the language used in the deed of conveyance, the plaintiff can not recover. It is also admitted that "as a general rule, by virtue of section 22 of Rule 123 of the Rules of Court, Exhibit A may be considered as containing the real agreement between the parties." But it is contended that "Exhibit A does not express the true intent and agreement

of the parties therein and that the appellant's consent thereto was given through mistake and error," in that she believed "that in signing that deed she was conveying 1,023 hectares only." This, as just stated, is the gravamen of the appellant's complaint.

The trial court made light of the plaintiff's evidence, underlining the fact that the sale was not arrived at in haste. It particularly took note of the circumstance that the plaintiff was surrounded by her children and co-vendors, all of whom are highly intelligent, cultured and experienced in business. Said the court with whom we agree:

"As may be seen from the above, the deed of sale was not prepared hurriedly contrary to the uncorroborated assertion of witness Roberto Gonzalez to the effect that the deed of sale was prepared in twelve or fourteen hours. Some of the vendors, children of the plaintiff, had, as the above evidence shows, all the opportunity to know the contents of the deed while yet in the process of preparation as well as after it was put in final form. One of the vendors, Roberto Gonzalez, testified that he noted that the area and price per unit of measure were not stated in the contract and said that he had called the attention of Atty. Ramon Diokno to this fact but that the latter explained that there was no time to include all those data in the document. The above-quoted testimonies of the defendant and Arsenio Santos, however, belie completely such assertion. The other vendors present on the occasion of the drafting of the document raised no voice of protest against the wording of the same. Not one demanded that the deed be revised to state that the sale was being made at so much per hectare, if that were really the real intent and agreement of the parties. The court does not hesitate to state that plaintiff's co-vendors, her children, are all men and women of high intelligence and of business acumen. Why not one of them had noticed the supposed variance between the wording of the final draft and their alleged agreement is indeed incomprehensible to the court. The only plausible explanation for their silence must be that the deed, as finally drafted, expresses the real and true agreement they had with the defendant.

"Then came the signing of the deed of sale Exhibit 1 or A, on August 5, 1941. Don Roberto Gonzalez, one of the vendors, first secured the signature thereon of the defendant who was then in his office at 105 Plaza Sta. Cruz. After the defendant had signed it, he issued the checks corresponding to each of the vendors, giving the said checks to Deogracias Matias, then Assistant Manager of the Rizal Surety & Insurance Co., for delivery to the vendors upon their signing the deed of sale, after which Don Roberto Gonzalez, accompanied by Deogracias Matias and the notary public, Conrado Carlos, proceeded in Don Roberto's car to the house of the plaintiff located at Calle Donada for the signing of the said document by the vendors. It was 12:00 noon when the three arrived at the house of the plaintiff. The plaintiff was then celebrating her birthday. Her children and co-vendors and other close relatives of the family were in attendance. After lunch, the co-vendors of the plaintiff took turns in reading the document brought by the notary public. After reading it, plaintiff's co-vendors signed, one after the other, the document Exhibit A. After her children had signed it, the document was taken to the plaintiff who was then at a certain table where she read the original, before signing the same. The foregoing facts have been fully established by the following testimony of the notary public Conrado Carlos who ratified the deed;

* * * * * * *

"Admitting for the sake of argument that the plaintiff did not read the deed of sale before she signed it, the fact remains that her children, her co-vendors, read it before they affixed their respective signatures thereon. If it were true that what they were selling to the defendant were some determinate hectares and not their respective entire participations and interests in the Hacienda Esperanza for a lump sum, the court sees no reason why not one of them had noticed such material defect in the deed and called the attention of their mother to that fact. The document in question is an important one indeed. It involves a considerable amount of money, almost a million. Anyone in place of the vendors would have taken the utmost care in the perusal of the document before signing the same. But all of them signed it without any one raising a voice of protest against the way it was drafted. Considering the high intelligence, the social prestige and business talent of the plaintiff and her children, may it now be successfully contended that their intention was not what their words express in said document?

* * * * * * *

"After a careful scrutiny of the evidence adduced by the parties in support of their conflicting contentions, as well as of the circumstances above mentioned, the court, in the light of the above-quoted judicial rulings, has reached the conclusion that the preponderant evidence is adverse to the plaintiff and in favor of the contentions of the defendant. Even the plaintiff herself and her son Roberto Gonzalez admit, at least impliedly, that she was selling her entire participation in the Hacienda Esperanza and that the exact area of her participation was still uncertain at the time the sale was consummated."

These findings are borne out by the weight of the direct testimony. They also draw support from the extraneous facts.

Among other things, it may be pointed out that the plaintiff's children's portions of the hacienda were, as they testified, sold for ₱400 a hectare only. It does not appear that these portions were inferior to their mother's in quality. Again the lands conveyed were admittedly not wholly first class, yet there does not seem to have been any attempt or conversation about finding or figuring out how much land was first class, how much was second, and how much was third. It would seem unsual that the buyer should have been willing to pay as much for the second and third class parts of the farm as for the parts of the more fertile kind if the sale had been made by the standard asserted in the complaint, i. e., for a specified sum for one unit of measure. Also of significance is the detail that included in the sale were buildings, an electric plant and other improvements, and the standing crop, for none of which was a separate price fixed. Besides there were residential lots in barrios occupied by tenants and barrio roads or streets all of which by the terms of the deed were embraced in the conveyance. Last but not least, there was no talk or proposal by either party for a re-survey of the land after the sale in order that the total amount to be paid upon the signing of the deed might be increased or reduced according as the new measurement would show a surplus or a deficiency. In

fact, there is no indication that either of the parties even thought of such a survey for such purpose before or after the sale was effected.

The plaintiff has the burden of proof to overcome the strong presumption that the document she and her co-sellers signed expressed their true intention. Our view of the plaintiff's evidence is that it is neither predominant nor conclusive. The best that can be said in its favor is that it does not rule out the opposite theory. Much less does it establish, in order to show that the mistake was mutual, that the buyer shared the vendors' intention and belief that the sale was by the hectare and not for a sum in gross as stated in the document of sale.

The plaintiff's evidence being as it is, the integrity of the document Exhibit A will, of necessity, have to be maintained and equitable relief denied. This would be true even if there were doubts. Decisions of this court and of American courts abound in favor of the salutary doctrine that contracts solemnly and deliberately entered into may not be overturned by inconclusive proof or by reason of mistakes of one of the parties to which the other in no way has contributed.

Moran's comments on the Rules of Court, Vol. III, p. 195, summing up the rulings laid down in various decisions of this court and one of the United States Supreme Court, says: "Relief by way of reformation of a written agreement will not be granted unless the proof of *mutual mistake* is of the *clearest* and *most satisfactory* character. The amount of evidence necessary to sustain a prayer for relief where it is sought to impugn a fact in a document is always *more than a mere preponderance* of the evidence."

In the case of Joaquin *vs.* Mitsumine (34 Phil., 858), this court held that "An alleged defect in a contract perfectly valid and binding on its face, must be *conclusively* proved. The validity and fulfillment of contracts can not be left to the will of one of the parties."

In the case of Irureta Goyena *vs.* Tambunting (1 Phil., 490), it appeared that the defendant bought a piece of land and agreed to pay $3,200 for it. It so happened that the land was less than what the parties supposed, and the buyer refused to pay the price agreed upon unless the corresponding reduction was made. The court, speaking through Mr. Justice Willard, dismissed the purchaser's plea, saying: "Whether evidenced by a public instrument or a private document, the contract is what the words of the parties indicates. It will not avail the defendant to say, 'But my intention was not what my words express,' The defendant bought a specific article and agreed to pay $3,200 for it. The fact that the article is not as large as he thought it was does not relieve him from the necessity of paying that price. *It was just such cases as this that article 1471,*

1, was intended to cover. If the defendant intended to buy by the meter, he should have so stated in the contract." (Italics ours.)

It is to be noted that in the last-cited case, the mistake was caused, intentionally or innocently, by the agent of the plaintiff who was favored by the shortage, whereas in the case at bar the error was in the plan of the plaintiff herself who was prejudiced by the excess.

Calculated to prevent litigation, the above rule is bottomed on sound public policy. The law abhors law suits, and litigations would be fostered if contracts of sale were to be overturned on slight or uncertain evidence. The only way in which such litigations could be minimized if not entirely prevented is by holding the parties conclusively bound by the terms of the agreement as expressed in the writing, unless the contrary is shown by clear proof.

We are inclined to agree with the plaintiff that the parties had before them Exhibit 10, the erroneous partition plan, when the sale price was discussed and agreed upon. It was natural and to be expected that the buyer should want to know the size and quantity of the property of which he knew little and in which he was to invest nearly a million pesos. There is little doubt in our mind that the price of the land per hectare was thoroughly considered if not fixed.

These phases of the transaction may well have induced in the sellers the distinct impression that the sale was by the hectare. The vehemence with which the plaintiff's cause was presented and urged is testimony to a sincere conviction.

But one must labor unsuccessfully to put into these talks a deeper meaning than that of preliminaries to the final shape given to the deal. As preliminaries their only role is to illustrate the final agreement in case of obscurity. The overall criterion by which the parties are to be governed is, by all standards, what they actually reduced in writing.

The haggling over and evaluation of the price of one unit of measure was resorted to merely as a means to an end. The end was the final agreement transmitted, to be put in final form, to the lawyer of both parties' choice, who had had no part in, and was unaware of, the initial and succeeding deliberations that led to the final result.

It seems plain from all the attending circumstances that the dominant and paramount thought in the minds of the parties during and at the end of the negotiation was a sale of the entire property owned by the sellers for a gross amount. Not only does this conclusion tally with the explicit and categorical language of the deed of conveyance, drawn by an able and neutral attorney in close consultations with the defendant and some of the plaintiff's children, but the form of the sale as thus finally drafted and sealed

and signed was by far the more convenient to all concerned. In a sale involving an extensive agricultural estate containing undetermined lots of different classes, unappraised improvements, barrio lots and roads and standing crop, it was well-nigh difficult, not to say impossible, to conclude a transaction technically and strictly by the hectare. Such form of sale would leave the parties in uncertainty on the amount to be added to or taken from the price in the ensuing re-adjustment in the event of discrepancy in the assumed area. Such form of sale would be fraught, as the parties ought to have realized, with extreme difficulties and harrassing controversies.

For the reasons stated, the excess in the area shown in the plan Exhibit 10 can not operate to change the contract. The error, the possibility of which neither party could have ignored, was a hazard which they must be presumed to have assumed. The hazard was not one-sided but worked both ways. The share of each of the plaintiff's children who sold their own holdings was believed to contain 150 hectares but on a re-survey turned out to have a superficial area of only 140 hectares.

After all, the surplus, considered in relation to the total area which the tract was supposed to have, was far from excessive, well within the range of ordinary contingency which parties to a ₱1,000,000 deal may be expected to risk.

On the third amended complaint, the facts are that the defendant entered upon the possession of lot No. 4397–A, measuring 43 hectares, which is separate and distinct from the plaintiff's one-third share, and of the residential lots and roads in the barrios which were still undivided among the heirs. Lot No. 4397–A, nevertheless, was included in transfer certificate of title 1886, in the name of the plaintiff, which was delivered to the purchaser by her.

Were these items comprised in the sale? The plaintiff answers No and the defendant answers Yes.

The discussion and authorities cited in connection with the main controversy apply with equal force to this one. The recital in the deed of sale, that the vendors conveyed "todo su derecho, interés, y participación en la Hacienda Esperanza," literally and properly construed, was a conveyance of the whole estate in the property in the absence of any limitations denoting intent to convey a less interest. We think this proposition is too plain to require argument.

Significantly, the third amended complaint was filed only after the termination of the hearing, on April 14, 1947, more than six years after the first complaint was docketed. This long delay, unaccompanied by any showing that the plaintiff was ignorant of the defendant's possession of the subject-matter of the last amended complaint, detracts from the merit of this cause of action.

The mere fact that lot No. 4397–A had been assigned to the plaintiff by her children in lieu of her usufructuary

right as surviving spouse is insufficient to negative the plain meaning of Exhibit A. The property was at her free disposal.

Similarly, the plaintiff had exclusive right to sell her share in the residential lots and roads in the barrios within the Hacienda although they were still pro-indiviso. As a matter of fact, she was selling only her right and interest in these lots and roads and not any specific parts thereof.

The judgment dismissing the complaint will be affirmed with costs.

Ozaeta, Parás, Pablo, Montenegro, and *Reyes, JJ.,* concur.

BENGZON, *J.,* dissenting:

I dissent, because the plaintiff has sufficiently proved that the parties had agreed to the sale of the land at ₱450 per hectare, both being of the belief that her share in the Hacienda Esperanza had an area of 1,023 hectares only.

As the land, upon resurvey, proved to be much more, article 1470 of the Old Civil Code applies, and should afford plaintiff appropriate relief.

Judgment affirmed.

[No. L-2659. October 12, 1950]

In the matter of the testate estate of Emil Maurice Bachrach, deceased. MARY MCDONALD BACHRACH, petitioner and appellee, *vs.* SOPHIE SEIFERT and ELISA ELIANOFF, oppositors and appellants.

1. USUFRUCT; STOCK DIVIDEND CONSIDERED CIVIL FRUIT AND BELONGS TO USUFRUCTUARY.—Under the Massachusetts rule, a stock dividend is considered part of the capital and belongs to the remainderman; while under the Pennsylvania rule, all earnings of a corporation, when declared as dividends in whatever form, made during the lifetime of the usufructuary, belong to the latter.
2. ID.; ID.—The Pennsylvania rule is more in accord with our statutory laws than the Massachusetts rule. Under section 16 of our Corporation Law, no corporation may make or declare *any* dividend except from the surplus profits arising from its business. Any dividend, therefore, whether cash or stock, represents surplus profits. Article 471 of the Civil Code provides that the usufructuary shall be entitled to receive *all* the natural, industrial, and civil fruits of the property in usufruct. The stock dividend in question in this case is a civil fruit of the original investment. The shares of stock issued in payment of said dividend may be sold independently of the original shares, just as the offspring of a domestic animal may be sold independently of its mother.

APPEAL from an order of the Court of First Instance of Manila. Rodas, J.

The facts are stated in the opinion of the court.

Ross, Selph, Carrascoso & Janda for appellants.
Delgado & Flores for appellee.

OZAETA, *J.*:

Is a stock dividend fruit or income, which belongs to the usufructuary, or is it capital or part of the corpus of the estate, which pertains to the remainderman? That is the question raised in this appeal.

The deceased E. M. Bachrach, who left no forced heir except his widow Mary McDonald Bachrach, in his last will and testament made various legacies in cash and willed the remainder of his estate as follows:

"*Sixth*: It is my will and do herewith bequeath and devise to my beloved wife Mary McDonald Bachrach for life all the fruits and usufruct of the remainder of all my estate after payment of the legacies, bequests, and gifts provided for above; and she may enjoy said usufruct and use or spend such fruits as she may in any manner wish."

The will further provided that upon the death of Mary McDonald Bachrach, one-half of all his estate "shall be divided share and share alike by and between my legal heirs, to the exclusion of my brothers."

The estate of E. M. Bachrach, as owner of 108,000 shares of stock of the Atok-Big Wedge Mining Co., Inc., received from the latter 54,000 shares representing 50 per cent stock dividend on the said 108,000 shares. On June 10, 1948, Mary McDonald Bachrach, as usufructuary or life tenant of the estate, petitioned the lower court to authorize the Peoples Bank and Trust Company, as administrator of the estate of E. M. Bachrach, to transfer to her the said 54,000 shares of stock dividend by indorsing and delivering to her the corresponding certificate of stock, claiming that said dividend, although paid out in the form of stock, is fruit or income and therefore belonged to her as usufructuary or life tenant. Sophie Siefert and Elisa Elianoff, legal heirs of the deceased, opposed said petition on the ground that the stock dividend in question was not income but formed part of the capital and therefore belonged not to the usufructuary but to the remainderman. And they have appealed from the order granting the petition and overruling their objection.

While appellants admit that a cash dividend is an income, they contend that a stock dividend is not, but merely represents an addition to the invested capital. The so-called Massachusetts rule, which prevails in certain jurisdictions in the United States, supports appellants' contention. It regards cash dividends, however large, as income, and stock dividends, however made, as capital. (Minot *vs.* Paine, 99 Mass., 101; 96 Am. Dec., 705.) It holds that a stock dividend is not in any true sense any dividend at all since it involves no division or severance from the corporate assets of the subject of the dividend; that it does not distribute property but simply dilutes the shares as they existed before; and that it takes nothing from the property

of the corporation, and adds nothing to the interests of the shareholders.

On the other hand, the so-called Pennsylvania rule, which prevails in various other jurisdictions in the United States, supports appellee's contention. This rule declares that all earnings of the corporation made prior to the death of the testator stockholder belong to the corpus of the estate, and that all earnings, when declared as dividends in whatever form, made during the lifetime of the usufructuary or life tenant are income and belong to the usufructuary or life tenant. (Earp's Appeal, 28 Pa., 368.)

"* * * It is clear that testator intended the remaindermen should have only the corpus of the estate he left in trust, and that all dividends should go to the life tenants. It is true that profits realized are not dividends until declared by the proper officials of the corporation, but distribution of profits, however made, is dividends, and the form of the distribution is immaterial." (*In re* Thompson's Estate, 262 Pa., 278; 105 Atl. 273, 274.)

In Hite *vs.* Hite (93 Ky., 257; 20 S. W., 778, 780), the Court of Appeals of Kentucky, speaking thru its Chief Justice, said:

"* * * Where a dividend, although declared in stock, is based upon the earnings of the company, it is in reality, whether called by one name or another, the income of the capital invested in it. It is but a mode of distributing the profit. If it be not income, what is it? If it is, then it is rightfully and equitably the property of the life tenant. If it be really profit, then he should have it, whether paid in stock or money. A stock dividend proper is the issue of new shares paid for by the transfer of a sum equal to their par value from the profit and loss account to that representing capital stock; and really a corporation has no right to declare a dividend, either in cash or stock, except from its earnings; and a singular state of case—it seems to us, an unreasonable one—is presented if the company, although it rests with it whether it will declare a dividend, can bind the courts as to the proper ownership of it, and by the mode of payment substitute its will for that of the testator, and favor the life tenants or the remainder-men, as it may desire. It cannot, in reason, be considered that the testator contemplated such a result. The law regards substance, and not form, and such a rule might result not only in a violation of the testator's intention, but it would give the power to the corporation to beggar the life tenants, who, in this case, are the wife and children of the testator, for the benefit of the remainder-men, who may perhaps be unknown to the testator, being unborn when the will was executed. We are unwilling to adopt a rule which to us seems so arbitrary, and devoid of reason and justice. If the dividend be in fact a profit, although declared in stock, it should be held to be income. It has been so held in Pennsylvania and many other states, and we think it the correct rule. Earp's Appeal, 28 Pa. St. 368; Cook, Stocks & S. sec. 554, * * *"

We think the Pennsylvania rule is more in accord with our statutory laws than the Massachusetts rule. Under section 16 of our Corporation Law, no corporation may make or declare *any* dividend except from the surplus profits arising from its business. Any dividend, therefore, whether cash or stock, represents surplus profits. Article 471 of the Civil Code provides that the usufructuary shall be entitled

to receive *all* the natural, industrial, and civil fruits of the property in usufruct. And articles 474 and 475 provide as follows:

"ART. 474. Civil fruits are deemed to accrue day by day, and belong to the usufructuary in proportion to the time the usufruct may last.

"ART. 475. When a usufruct is created on the right to receive an income or periodical revenue, either in money or fruits, or the interest on bonds or securities payable to bearer, each matured payment shall be considered as the proceeds or fruits of such right.

"When it consists of the enjoyment of the benefits arising from an interest in an industrial or commercial enterprise, the profits of which are not distributed at fixed periods, such profits shall have the same consideration.

"In either case they shall be distributed as civil fruits, and shall be applied in accordance with the rules prescribed by the next preceding article."

The 108,000 shares of stock are part of the property in usufruct. The 54,000 shares of stock dividend are civil fruits of the original investment. They represent profits, and the delivery of the certificate of stock covering said dividend is equivalent to the payment of said profits. Said shares may be sold independently of the original shares, just as the offspring of a domestic animal may be sold independently of its mother.

The order appealed from, being in accordance with the above-quoted provisions of the Civil Code, is hereby affirmed, with costs against the appellants.

Moran, C. J., Parás, Feria, Pablo, Bengzon, Tuason, Montemayor, and *Reyes, JJ.*, concur.

Order affirmed.

[No. L-2534. Octubre 13, 1950]

LINO GOROSPE Y OTRO, demandantes y apelantes, *contra* LUCIANO MILLAN Y OTRO, demandados y apelados

SOBRESEIMIENTO DEL JUICIO; BAJO EL CODIGO DE PROCEDIMIENTO CIVIL ANTIGUO Y EL REGLAMENTO VIGENTE.—No debe confundirse la disposición del actual reglamento con la del Código de Procedimiento Civil en cuanto al sobreseimiento de la demanda por incomparecencia del demandante. El reglamento vigente ordena expresamente que el sobreseimiento, ya sea a moción del demandado o a iniciativa del Juzgado, tendrá el efecto de una adjudicación en cuanto a los méritos del asunto, a menos que se provee de otro modo por el Juzgado.

APELACIÓN contra una orden del Juzgado de Primera Instancia de Pangasinan. Mañalac, J.

Los hechos aparecen relacionados en la decisión del Tribunal.

Sres. Quijano, Rosete y Tizon en representación de los apelantes.

Sres. Ramirez, Gonzales y Mindaro en representación de los apelados.

PABLO, *M.*:

En su demanda presentada en 11 de agosto de 1941 en el Juzgado de Primera Instancia de Pangasinán, los damandantes alegan que el año 1913 encomendaron a Amadeo Millan la gestión de comprar terrenos en su nombre proporcionándole el dinero correspondiente; que Amadeo Millan compró, a nombre de los demandantes, ocho parcelas de terreno que son los lotes Nos. 3097, 3974, 3977, 3978, 3980, 3981, 4004 y 3973 del catastro de Asingan, Pangasinán, amillarados en ₱370.00, entregándoles la posesión inmediata de dichos lotes, y desde entonces de una manera pacífica y adversa los poseyeron en concepto de dueños; que, por medios fraudulentos, Amadeo Millan consiguió registrar dichos lotes a su nombre, obteniendo los correspondientes certificados de título a su nombre y posteriormente al de sus herederos; que al descubrir el fraude, los demandantes requirieron a Amadeo Millan que otorgase la escritura de traspaso correspondiente, y él se comprometió a hacerlo; pero a pesar de esta promesa no llegó a otorgarse el documento hasta que falleció el 12 de septiembre de 1927, por lo que los demandantes requirieron a los herederos de Amadeo Millan, hoy demandados, que otorgasen la escritura de traspaso que su padre no había conseguido otorgar, a lo que dichos herederos se comprometieron a hacer; pero a pesar de varios requerimientos, los demandados no cumplieron su promesa, por lo que piden en su demanda que los demandados, además de pagar daños y perjuicios en la cantidad de ₱1,000, sean condenados a otorgar la escritura de traspaso de dichos lotes a favor de los demandantes.

En 2 de septiembre de 1941 los demandados presentaron una moción de sobreseimiento fundada en tres motivos, el primero de los cuales es el siguiente:

"1. That the cause of action is barred by a prior judgment."

No se citan los otros dos porque no son objeto de apelación. En apoyo de su contención, los demandados alegan que en la causa civil No. 8390 del Juzgado de Primera Instancia de Pangasinán, entre las mismas partes y sobre el mismo motivo de acción, después de contestada la demanda, el Hon. Juez Bejasa dictó un auto de fecha 5 de marzo de 1941 sobreseyendo la demanda.

El Honorable Juez Angeles, en su orden de 20 de noviembre de 1946, denegó la moción de sobreseimiento reservando, sin embargo, a los demandados el derecho de presentar sus defensas en su contestación.

En 29 de noviembre de 1946 los demandados presentaron una moción de reconsideración. Después de tener en cuenta los informes escritos de una y otra parte y las pruebas presentadas en apoyo de la moción de sobreseimiento, el Hon. Juez Mañalac, que sucedió al anterior, dictó

su orden de 31 de marzo de 1947 que, revocando la del 20 de noviembre de 1946, sobreseyó la demanda con costas contra los demandantes.

Los demandantes apelan contra la orden de sobreseimiento, y señalan tres errores, a saber: 1°, que erró el Juzgado *a quo* al revocar la orden de 20 de noviembre de 1946, 2.°, al sobreseer la demanda y 3.°, al no ordenar a los demandados que presentasen su contestación.

Resuelto el segundo error, como corolario quedan asimismo resueltos el primero y tercer error.

Parte de la orden de sobreseimiento del Hon. Juez Mañalac es la siguiente:

"It appears in the records that in civil case No. 8390 of this court, entitled Lino Gorospe et al., plaintiffs *versus* Luciano Millan et al., defendants, these same plaintiffs in this instant case instituted action on July 8, 1940, against the same defendants herein for the same cause of action (Exhibits 1 and 1-A). After the issues had been joined, civil case No. 8390 was dismissed by the court by its order of March 5, 1941 (Exhibits 2, 2–A and 3). After considering the plaintiff's motion to vacate judgment (Exhibit 4) and the defendants' opposition thereto (Exhibit 5), the court denied the former's motion to vacate judgment (Exhibit 6).

"Subsequently, that is, on August 14, 1941, the complaint in this case was filed in this same court. After service of the corresponding summons upon the defendants Luciano Millan and Eladia Cabato Vda. de Millan, these two filed their motion to dismiss dated September 2, 1941. The plaintiffs answered this motion to dismiss on September 12, 1941. But, before this Court could pass upon and resolve the said motion to dismiss and the opposition thereto, the recent World War broke out in the Philippines and the same remained pending until October 14, 1946, when they were again set for hearing.

"On October 14, 1946, the Court issued its order in open court, instructing counsel for respective parties hereto to submit their respective memoranda, for and against the motion to dismiss. However, before the said counsel could file their respective memoranda, the Court issued its order of November 20, 1946 denying the defendants' motion to dismiss."

El último párrafo transcrito explica la razón por qué los dos jueces han dictado órdenes contrarias. El Hon. Juez Angeles no teniá a la vista las pruebas documentales [1] en apoyo de la moción, por lo que dictó la orden denegando la petición de sobreseimiento, reservando, sin embargo, a los demandados el derecho "to set up these defenses in their answers." En cambio, el Hon. Juez Mañalac, al resolver la moción de reconsideración, tuvo en cuenta las pruebas citadas en el primer párrafo transcrito.

[1] Un párrafo de la orden de dicho Juez dice así:

"The arguments advanced by the movants in support of each and every one of said grounds are enlightening, but the pleadings and other documents relied upon in support thereof and upon which the court could base and rely in its conclusion have not been presented. For instance, the record of the alleged case No. 8390 can not be found, and the same is true as to the other case No. 1580 of this court."

La causa civil No. 8390 ha sido sobreseida en 5 de marzo de 1941 (Exhíbits 2, 2-A) por el Hon. Juez Bejasa con el siguiente auto:

"No encontrando este Juzgado bien fundada la última petición de transferencia, y no habiendo comparecido en el día de hoy los abogados de los demandantes al llamarse a vista esta causa, el Juzgado, de acuerdo con su orden de fecha 11 de Febrero de 1941, sobresee esta causa sin pronunciamiento alguno en cuanto a las costas."

No aparece en autos copia de la orden de 11 de Febrero, pero indudablemente era una orden que concedía el ultimo aplazamiento de la vista.

Los apelantes apoyándose en las disposiciones del Código de Procedimiento Civil (art. 127, párs. 2 y 3, y decisiones aplicables) pretenden que el sobreseimiento transcrito no es definitivo; que si hubiera sido así la intención del Juzgado, hubiese dicho *se sobresee definitivamente.* Es inaplicable la cita, porque el sobreseimiento se dictó en 5 de marzo de 1941, no bajo el Código de Procedimiento Civil, sino bajo el actual Reglamento que entró en vigor el 1.° de Julio de 1940.

La orden del Juez Bejasa tiene el efecto de una adjudicación en cuanto a los méritos del asunto, porque no se ha sobreseído de una manera condicional o provisional.

No debe confundirse la disposición del actual reglamento con la del Código de Procedimiento Civil en cuanto al sobreseimiento de la demanda por incomparecencia del demandante. El reglamento vigente ordena expresamente que el sobreseimiento, ya sea a moción del demandado o a iniciativa del Juzgado, tendrá el efecto de una adjudicación en cuanto a los méritos del asunto, a menos que se provea de otro modo por el Juzgado. Como el Juzgado al dictar su orden de sobreseimiento en 5 de Marzo de 1941 no había dispuesto expresamente que era un sobreseimiento provisional, tiene que ser definitivo y completa adjudicación en cuanto a los méritos del asunto.

La Regla 30, artículo 3 dispone:

"ART. 3. Omisión de Proseguir la Acción.—Cuando el demandante dejare de comparecer en el día de la vista, o de proseguir su acción por un lapso de tiempo irrazonable o de cumplir estas reglas o cualquiera orden del juzgado, la acción podrá ser sobreseida mediante moción del demandado o a iniciativa propia del juzgado. Tal sobreseimiento tendrá el efecto de una adjudicación en cuanto a los méritos del asunto, a menos que se provea de otro modo por el juzgado."

Comentando esta disposición, el Sr. Presidente de este Tribunal dice:

"Taken from Rule 41 (*b*) of the Federal Rules of Civil Procedure, and is similar in part to section 127, Nos. 2 and 3, of Act No. 190.

"Under the old provision, if the plaintiff fails to appear, the court could not dismiss the case, unless the defendant appears and asks for dismissal. Under the new provision, the case may be

dismissed upon the court's own motion. Under the old procedure, the dismissal is without prejudice, but under the new procedure, the dismissal 'shall have the effect of an adjudication upon the merits, unless otherwise provided by court.' * * * (1 Moran, 3.a ed., 562.)

"The dismissal of a case, upon defendant's motion, for plaintiff's failure to appear, has the effect of an adjudication upon the merits, if the court fails to provide otherwise." (Ouye *vs.* American President Lines, Ltd., 44 Off. Gaz., 29.)

La innovación acelera el despacho de asuntos. Los demandantes deben presentar sus pruebas sin dilación y no deben entretener a los demandados y a los Juzgados en mociones de transferencia de vista.

Se confirma la orden apelada con costas contra el apelante.

Morán, Pres., Ozaeta, Parás, Feria, Bengzon, Tuason, Montemayor, y *Reyes, MM.*, están conformes.

Se confirma la orden.

[No. L–3972. October 13, 1950]

FLOREÑA SALES, on behalf of her step-father Fidel Ariston, petitioner, *vs.* THE DIRECTOR OF PRISONS, respondent

STATUTORY CONSTRUCTION; VIOLATION OF CONDITIONAL PARDON; POWER OF PRESIDENT TO RECOMMIT PRISONER; ARTICLE 159, REVISED PENAL CODE, AND SECTION 64 (*i*), REVISED ADMINISTRATIVE CODE, CONSTRUED.—Article 159 of the Revised Penal Code, which penalizes violation of a conditional pardon as an offense, and the power vested in the President by section 64 (*i*) of the Revised Administrative Code to authorize the recommitment to prison of a violator of a conditional pardon to serve the unexpired portion of his original sentence, can stand together and the proceeding under one provision does not necessarily preclude action under the other. Section 64 (*i*) of the Revised Administrative Code has not been repealed by article 159 of the Revised Penal Code.

ORIGINAL ACTION in the Supreme Court. Habeas corpus.

The facts are stated in the opinion of the court.

Floreña Sales on behalf of her step-father, petitioner Ariston.

First Asistant Solicitor General Roberto A. Gianzon and *Solicitor Martiniano P. Vivo* for respondent.

OZAETA, *J.:*

This is an original petition for habeas corpus filed on behalf of prisoner Fidel Ariston, now confined in the New Bilibid Prison.

It appears that on August 31, 1939, Fidel Ariston was convicted of frustrated murder by the Court of First Instance of Camarines Sur and sentenced to suffer from 1 year and 8 months of *prisión correccional* to 7 years of *prisión mayor*. After serving 2 years, 3 months, and 1 day of that sentence, he was released on January 6, 1942,

by virtue of a conditional pardon granted him by the President of the Philippines, the condition being that he shall not again violate any of the penal laws of the Philippines and that, should this condition be violated, he shall be proceeded against in the manner prescribed by law.

On February 1, 1950, said prisoner was recommitted to the custody of the Director of Prisons after having been convicted of *estafa* and sentenced by the Court of First Instance of Manila to suffer 3 months and 11 days of *arresto mayor* and to indemnify the offended party in the amount of ₱180, with subsidiary imprisonment in case of insolvency.

On April 10, 1950, the Executive Secretary, by authority of the President and by virtue of the authority conferred upon the President by section 64 (*i*) of the Revised Administrative Code, ordered the Director of Prisons to recommit to prison the said prisoner Fidel Ariston to serve the remaining unexpired portion of the sentence for which he was originally committed to prison, in view of the fact that he had violated the condition of his pardon in that he was subsequently convicted of *estafa* by the Court of First Instance of Manila.

The present petition for habeas corpus is premised upon the contention that the President has no authority to order the prisoner's recommitment to serve the unexpired portion of his original sentence, because violation of a conditional pardon is an offense penalized by article 159 of the Revised Penal Code, and that, unless the prisoner is prosecuted for and convicted of that offense, he cannot be compelled to serve the unexpired portion of his original sentence.

Said article 159 reads as follows:

"ART. 159. *Other Cases of Evasion of Service of Sentence.*—The penalty of *prisión correccional* in its minimum period shall be imposed upon the convict who, having been granted conditional pardon by the Chief Executive, shall violate any of the conditions of such pardon. However, if the penalty remitted by the granting of such pardon be higher than six years, the convict shall then suffer the unexpired portion of his original sentence."

On the other hand, the President of the Philippines is authorized by section 64 (*i*) of the Revised Administrative Code:

"(*i*) To grant to convicted persons reprieves or pardons, either plenary or partial, conditional, or unconditional; to suspend sentences without pardon, remit fines, and order the discharge of any convicted person upon parole, subject to such conditions as he may impose; and *to authorize the arrest and reincarceration of any such person who, in his judgment, shall fail to comply with the condition, or conditions, of his pardon,* parole, or suspension of sentence." (Italics ours.)

The only question to determine is whether the above-quoted provision of the Revised Administrative Code has been repealed by section 159 of the Revised Penal Code.

The Revised Penal Code, which was approved on December 8, 1930, contains a repealing clause (article 367), which expressly repeals among other Acts sections 102, 2670, 2671, and 2672 of the Administrative Code. It does not repeal section 64 (*i*) above quoted. On the contrary, Act No. 4103, the Indeterminate Sentence Law, which is subsequent to the Revised Penal Code, in its section 9 expressly preserves the authority conferred upon the President by section 65 (*i*) of the Revised Administrative Code.

The legislative intent is clear, therefore, to preserve the power of the President to authorize the arrest and reincarceration of any person who violates the condition or conditions of his pardon notwithstanding the enactment of article 159 of the Revised Penal Code. In this connection, we observe that section 64 (*i*) of the Administrative Code and article 159 of the Revised Penal Code are but a reiteration of Acts Nos. 1524 and 1561, under which a violator of a conditional pardon was liable to suffer and to serve the unexpired portion of the original sentence.

It is contended by the petitioner that the power vested in the President by section 64 (*i*) of the Revised Administrative Code to authorize the arrest and reincarceration of a violator of a conditional pardon is repugnant to the due process of law granted by the Constitution (sec. 1, Article III). A similar contention was advanced by the petitioner in the case of Fuller *vs.* State of Alabama (45 L. R. A., 502), and was rejected by the Supreme Court of that state, speaking thru Chief Justice McClellan, in the following language:

"But it is insisted that this statute, in so far as it undertakes to authorize the governor to determine that the condition of the parole has not been complied with, and the summary arrest of the convict thereupon by the direction of the governor, and his summary return or remandment to servitude or imprisonment under the sentence, is violative of organic guaranties of jury trial, that no warrant shall be issued to seize any person without probable cause, supported by oath or affirmation, etc. This position takes no account of the fact that the person being dealt with is a convict, that he has already been seized in a constitutional way, been confronted by his accusers and the witnesses against him, been tried by the jury of his peers secured to him by the Constitution, and by them been convicted of crime, and been sentenced to punishment therefor. In respect of that crime and his attitude before the law after conviction of it, he is not a citizen, nor entitled to invoke the organic safeguards which hedge about the citizen's liberty, but he is a felon, at large by the mere grace of the executive, and not entitled to be at large after he has breached the conditions upon which that grace was extended to him. In the absence of this statute, a convict who had broken the conditions of a pardon would, if there were no question of his identity or the fact of breach of the conditions, be subject to summary arrest, and remandment, as matter of course, to imprisonment, under the original sentence by the court of his conviction, or any court of co-ordinate or superior jurisdiction,—a purely formal proceeding. If the person arrested denied his identity with the convict sought to be

remanded, he might be entitled to a jury trial on that issue alone. If he denied only the alleged breach of the conditions of his enlargment he would not be entitled to a jury on that issue, but it would be determinable in a summary way by the court before whom he is brought. But the statute supervenes to avoid the necessity for any action by the courts in the premises. The executive clemency under it is extended upon the conditions named in it, and he accepts it upon those conditions. One of these is that the governor may withdraw his grace in a certain contingency, and another is that the governor shall himself determine when that contingency has arisen. It is as if the convict, with full competency to bind himself in the premises, had expressly contracted and agreed that, whenever the governor should conclude that he had violated the conditions of his parole, an executive order for his arrest and remandment to prison should at once issue, and be conclusive upon him. Of course, if, in the execution of the order of arrest, the wrong man should be taken, he would be entitled to enlargement on habeas corpus; but there is no question of identity in the case before us. Upon such determination by the governor, evidenced by the executive order of arrest, the parole is avoided, and the person who has been at large upon it at once falls into the category of an escaped convict, so far as measures for his apprehension and remandment under the original sentence are concerned, and he is, no more than an escaped convict, entitled to freedom from arrest, except upon probable cause, supported by oath or affirmation, nor to a trial by jury, nor to his day in court for any purpose. Kennedy's Case, 135 Mass. 48; Conlon's Case, 148 Mass., 168; Arthur *vs.* Craig, 48 Iowa, 264; 30 Am. Rep., 395; State, O'Connor *vs.* Wolfer, 53 Minn., 135; 19 L. R. A., 783."

A similar ruling was laid down in Kennedy's Case (135 Mass., 48); and in People *vs.* Dudley (173 Mich., 389).

We are of the opinion that article 159 of the Revised Penal Code, which penalizes violation of a conditional pardon as an offense, and the power vested in the President by section 64 (*i*) of the Revised Administrative Code to authorize the recommitment to prison of a violator of a conditional pardon to serve the unexpired portion of his original sentence, can stand together and that the proceeding under one provision does not necessarily preclude action under the other. Take, for instance, the case of the present prisoner Fidel Ariston. Although under section 64 (*i*) of the Revised Administrative Code he has been recommitted to serve the remitted portion of his original sentence—4 years, 8 months, and 29 days—for having violated the condition of his pardon, he may still be prosecuted under article 159 of the Revised Penal Code and sentenced to suffer *prisión correccional* in its minimum period. In other words, one who violates the condition of his pardon may be prosecuted and sentenced to suffer *prisión correccional* in its minimum period without prejudice to the authority conferred upon the President by section 64 (*i*) of the Revised Administrative Code to recommit him to serve the unexpired portion of his original sentence, unless such unexpired portion exceeds 6

years, in which case the penalty of *prisión correccional* in its minimum period provided by article 159 of the Revised Penal Code shall no longer be imposed.

There is no dispute in this case as to the identity of the prisoner and as to the violation by him of his conditional pardon.

Wherefore, the petition is denied, with costs *de oficio*, the petitioner having been authorized to litigate as a pauper.

Moran, C. J., Pablo, Bengzon, Tuason, Montemayor, and *Reyes, JJ.,* concur.

PARÁS, *J.,* dissenting:

With reference to the power of the Governor General (now President) of the Philippines to grant conditional pardons, Act No. 1524 of the Philippine Commission, approved on August 9, 1906, provides for the procedure by which a person conditionally pardoned is recommitted to prison for the unexpired portion of his original sentence if guilty of a violation of any condition of his pardon. The procedure, in substance, was for the proper court of first instance to investigate, in the presence of the accused and the proper prosecuting official, whether any condition was in fact violated.

By virtue of section 64, paragraph (*i*), of the Revised Administrative Code of 1917, the President of the Philippines is empowered "to authorize the arrest and re-incarceration of any such person who, in his judgment, shall fail to comply with the condition, or conditions, of his pardon, parole, or suspension of sentence."

In the Revised Penal Code approved on December 8, 1930, but effective on January 1, 1932, article 159 provides as follows: "The penalty of *prisión correccional* in its minimum period shall be imposed upon the convict who, having been granted conditional pardon by the Chief Executive, shall violate any of the conditions of such pardon. However, if the penalty remitted by the granting of such pardon be higher than six years, the convict shall then suffer the unexpired portion of his original sentence." The question that arises is whether the President can still, under section 64 (*i*) of the Revised Administrative Code, order the recommitment of a convict violating any condition of his pardon. This should be answered in the negative. While it may be granted, with some degree of plausibility, that even after the Revised Administrative Code of 1917 had taken effect, the procedure prescribed in Act No. 1524 might be followed concurrently with the power of the President to order the recommitment under section 64 (*i*) of said Code, because the result is the same, in that in both cases the convict will have to be recommitted for the unexpired portion of his original sentence, the same consideration is not true after the

passage of the Revised Penal Code which makes the violation of a conditional pardon a crime, punishable by a specific penalty, namely, *prisión correccional* in its minimum period or, if the penalty remitted be higher than six years, imprisonment for the unexpired portion of his original sentence.

Under article 159 of the Revised Penal Code, violators of conditional pardons will therefore receive the uniform penalty of *prisión correccional* in its minimum period, or from 6 months and 1 day to 2 years and 4 months, or, if the penalty remitted be higher than six years, imprisonment for the unexpired portion of the original sentence. If a 6-year termer has served one year before being conditionally pardoned, and subsequently violates the condition of his pardon, he will have to be recommitted under section 64 (*i*) of the Revised Administrative Code for the unexpired term of five years, whereas if he is pardoned after serving 5 years and 10 months, he will have to be recommitted for the unexpired term of only two months. Under article 159 of the Revised Penal Code, the term of imprisonment he will have to suffer, if convicted, will be within the range of only from *prisión correccional* in its minimum period, whether the unexpired term is five years or two months. If we admit the proposition that section 64 (*i*) of the Revised Administrative Code and article 159 of the Revised Penal Code may co-exist, cases will arise in which, either to favor or to prejudice a violator of a conditional pardon, the Government may or may not choose to exercise the power granted to the President by section 64 (*i*) of the Revised Administrative Code. In example already given, where the unexpired portion is only two months, the violator may be recommitted to favor him. Reversing the situation, if the unexpired term in five years, he may be recommitted to prison to prejudice him. This objectionable feature, in addition to the circumstance that the Revised Penal Code requires a hearing—which is not necessary under the Revised Administrative Code,—warrants the conclusion that the two provisions cannot be harmonized.

The same considerations may have impelled the Constitutional Convention not to adopt the recommendation of the Committee on Executive Power to include a proviso empowering the President to authorize the arrest and reincarceration of such person who in his judgment shall fail to comply with the condition or conditions of his pardon, parole, or suspension of the sentence, it being noteworthy that the convention merely provided that the President "shall have the power to grant reprieves, commutations, and pardons, and remit fines and forfeitures, after conviction, for all offenses, except in cases of impeachment, upon such conditions and with such restrictions and limitations as he may deem proper to impose." (Constitution,

Art. VII, sec. 10, par. 6; Aruego, Framing of the Constitution, Vol. II, p. 435.)

It should be remembered also that the Revised Penal Code, in article 367, has repealed all laws and parts of laws which are contrary to the provisions of said code. Having shown the inconsistent results if section 64 (*i*) of the Revised Administrative Code and article 159 of the Revised Penal Code were considered co-existent, the first provision in so far as it refers to the power of the President to recommit a violator of a conditional pardon for the unexpired term, must be deemed repealed.

My vote is, therefore, to grant the petition for *habeas corpus*, without prejudice.

FERIA, *J.*, with whom concurs PARÁS, *J.*, dissenting:

At the outset it is important to observe that parole and pardon are two different things. Parole is a conditional release of a prisoner with an unexpired sentence, or suspension of his sentence, without remitting the penalty imposed upon him; while pardon is a remission of the penalty imposed upon a defendant together with all the accessories appurtenant thereto.

Sections 3 and 4 of Act No. 1524 providing for the enforcement of condition made by the Governor-General in the exercise of his discretion in granting conditional pardon, read as follows:

"*No. 1524.*—An Act providing for the enforcement of conditions made by the Governor-General in the exercise of his discretion in granting conditional pardons.

* * * * * * *

"SEC. 3. Whenever the provincial fiscal, or the prosecuting attorney of the City of Manila, as the case may be, shall ascertain that any of the conditions of a conditional pardon, heretofore or hereafter granted, has been violated by the person so conditionally pardoned, he shall apply to the court of first instance for an order of arrest against the person so conditionally pardoned to have him brought before the court. The court of first instance shall issue the order of arrest and proceed with the investigation of the facts, in the presence of the accused and the proper prosecuting official.

"SEC. 4. If the court shall find from said investigation that one or more of the conditions of such pardon, heretofore or hereafter granted, has been violated by the person so pardoned, the court shall order the recommitment and confinement of such person in the proper prison for the unexpired portion of his original sentence. Such order of the court shall be sufficient authority to the custodian of any public prison designated therein to receive and safely keep the body of the person so conditionally pardoned during the unexpired portion of his original sentence."

Section 2 of Act No. 1561, authorizing the Governor-General to parole prisoners and providing for the enforcement of the conditions of such parole, provides:

"*No. 1561.*—An Act authorizing the Governor-General to parole prisoners and providing for the enforcement of the conditions of such paroles.

* * * * * * *

"SEC. 2. Upon the failure of any convict to observe the conditions of his parole, to be determined by the Governor-General, the Governor-General shall have authority to direct the arrest and return of such convict to custody, and thereupon said convict shall be required to carry out the sentence of the court as though no parole had been granted him, the time between the parole and subsequent arrest not being taken as a part of the term of his sentence in computing the period of his confinement."

Evidently the reason why under Act No. 1524 an investigation of the facts by the courts is necessary for the purpose of determining whether the condition of a pardon has been violated by the person so pardoned before he can be recommitted to prison, while in the case of violation of parole no such investigation is required and the sole judge of any violation of the parole is the Chief Executive, who may, summarily, order the arrest and reincarceration of the convict, is that the violation of a conditional pardon is more serious than that of a parole, since pardon is more beneficial than parole.

As the Administrative Code of 1916 and the Revised Administrative Code of 1917 did not repeal and incorporate the provisions of Act No. 1524, but repealed Act No. 1651 and incorporated its provisions in section 80 (*i*) of the Administrative Code of 1916, which is section 64 (*i*) of the Revised Administrative Code, the word "pardon" in the last line of said section must have been inserted through inadvertence, and according to the maxims *"utile par inutile non vitiatur,"* and *"surplusagium non nocet,"* it must be disregarded, for the following reasons:

(1) Section 80 (*l*) of the original Administrative Code of 1916 expressly cites 1 and 2 of Act No. 1561, and not Act 1524, as the only source thereof, while Act No. 1524 was not repealed, either totally or partially, by the Administrative Code of 1916 or the Revised Administrative Code of 1917. If it were the intention of the Code Committee to amend the provision of said Act No. 1524 and do away with the hearing and investigation of the charged violation by the court, it would have repealed said Act No. 1524 and expressly incorporated its provisions in the Revised Administrative Code.

(2) It is a well known rule of statutory construction that statutes introduced in these Islands under the American sovereignty like Act No. 1524 and Act No. 1561 as incorporated in section 64 (*i*) of the Revised Administrative Code, must be construed and applied in the lights of the rules, principles and doctrine of the common law (Alzua and Arnalot *vs.* Johnson, 21 Phil., 308). Therefore, the question whether or not Act No. 1524 has been repealed by and incorporated in section 64 (*i*) of Revised Administrative Code must be answered in the negative; because

"In nearly every jurisdiction wherein the question has been raised it has been held that a convicted defendant released under suspended sentence (parole or conditional pardon) is entitled to notice and hearing on the issue whether he has broken the conditions or the suspension before the suspension may be revoked" (54 A. L. R., Ann., p. 1471). And "it seems to be the more general rule that in the absence of a statute to the contrary, on an express reservation in the parole or pardon of the power of summary revocation, a convict who has been released under a parole or conditional pardon is entitled to notice and an opportunity to be heard before some court or body of competent jurisdiction, either by writ of habeas corpus or otherwise, on the question whether the conditions of the parole or conditional pardon has been violated before it can be effectively revoked." (54 A. L. R., Ann., p. 1474.)

The cases of Fuller *vs.* State of Alabama on parole (122 Ala., 52) quoted, Kennedy case on conditional pardon (173 Mich., 389) cited in the decision in support thereof, are exceptions to the above quoted general rule, and based upon express statutory provision authorizing such procedure. (54 A. L. R., Ann., p. 1479.)

(3) Act No. 1941, creating a Code Committee, authorizes the Committee to revise and amend the Civil, Commercial, Penal and Procedure Codes in force in the Philippine Islands, and to prepare new Codes upon said subjects, in accordance with modern principle of the science of law and with the customs of the country. But section 7 of the same Act No. 1941 only empowers the Code Committee, "whenever the Governor-General shall decide that the public interest requires it and shall so order, to revise, compile and codify the existing general statutes of the Philippine Commission and Philippine Legislature," not to alter or amend them. So although the Administrative Code was adopted and enacted into law by Act No. 2657 effective upon the final day of July, 1916, and "the bill for a code occupies no different position than a bill for any other law, and it is common knowledge that many bills enacted by the legislature have in fact been prepared by person with no official status before it * * * nevertheless, there is much practical reason for denying the commissioners the power to affirmatively alter the law. For in spite of legislative care in examining the commissioners' proposal, it is inevitable that the legislature can not give the same detailed care to the consideration of a bill for a code that it can to an ordinary bill." (2 Sutherland, Statutory Construction, third edition, pp. 252, 253.)

And (4) this Supreme Court, in the case of People *vs.* Caraballo (62 Phil., 651), held that "Prior to January

1, 1932, the date when the Revised Penal Code took effect there was no law punishing the violation of a conditional pardon as a crime, the only law then in force being Act No. 1524 which merely provided for the enforcement of conditions made by the Governor-General in the exercise of his discretion in granting conditional pardons."

Even if the Revised Administrative Code had repealed Act No. 1524 and incorporated the provisions thereof in section 64 (*i*) of the Revised Administrative Code of 1917 as contended, the latter in so far as it refers to the enforcement of conditions made by the Chief Executive in the exercise of his discretion in granting conditional pardon, should be considered as repealed by section 159 of the Revised Penal Code because it is contrary or repugnant to the provisions of said section 159. For section 367 of the Revised Penal Code provides that "all laws and part of laws which are contrary to the provisions of this Code are hereby repealed." They are repugnant to each other and can not stand together, as a cursory comparison of their respective provisions will show:

(*a*) Under section 64 (*i*) of the Revised Administrative Code, a defendant who is charged with having violated his conditional pardon may be arrested and reincarcerated to serve the unexpired portion of the sentence by order of the Chief Executive, without notice or previous hearing for the determination whether the condition of the pardon has been violated by the defendant; while under section 159 of the Revised Penal Code such hearing or investigation of facts is necessary as part of due process of law. It is to be observed that the condition of a pardon may consist, not in that the defendant shall not violate any of the penal laws as in the present case, where a certified copy of the final judgment of defendant's conviction would generally be sufficient, without any further investigation, to show that the defendant has violated his conditional pardon, but in that the prisoner shall not be guilty of any misconduct as in the case of U. S. *vs.* Ignacio (33 Phil., 203), or of any infraction of the law punishable with a certain penalty as in the case of U. S. *vs.* Villalon (37 Phil., 325), or in any other, in which cases it would be necessary to make an investigation of the facts before the conditional pardon may be revoked.

(*b*) Under section 64 (*i*) of the Revised Administrative Code a person charged with violating his conditional pardon may be summarily arrested and recommitted to prison to serve the unexpired portion of the original sentence by order of the President, even though in fact he may not have violated the conditions of his pardon or has a good and valid defense, and the action of the Chief Executive is conclusive upon him and the courts have no jurisdiction or power to interfere with the action taken by the

President of the Philippines in the exercise of his authority. While if the same person is prosecuted and convicted under article 159 of the Revised Penal Code for the same violation, the defendant may appeal from the judgment of conviction and be acquitted by the court of last resort.

(*c*) The penalties which must be imposed by the courts upon a defendant convicted of violation of conditional pardon under article 159 of the Revised Penal Code are to suffer (1) the unexpired portion of his original sentence if the penalty remitted by the granting of such pardon be higher or more than six years, or (2) the penalty *prisión correccional* in its minimum period, that is, from six months and one day to two years and four months, if the penalty remitted be less than six years, irrespective of whether the unserved sentence be one day or six years. (People *vs.* Sanares, 62 Phil., 826.) If article 159 of the Revised Penal Code "and the power vested in the President by section 64 (*i*) of the Revised Administrative Code to authorize the recommitment of a violator of a conditional pardon to serve the unexpired portion of his original sentence, can stand together and the proceeding under one provision does not necessarily exclude action under the other," as gratuitously held in the decision (we say gratuitously because it is not supported by any reason or authority), a person conditionally pardoned, may be administratively and judicially punished twice for one and the same violation of his conditional pardon. For example, if the penalty remitted by the conditional pardon be less than six years, the prisoner may, by order of the Chief Executive, be arrested and incarcerated to suffer the unexpired portion of his sentence unde rsection 64 (*i*) of the Revised Administrative Code; and, besides, he may be prosecuted and convicted by the courts to suffer *prisión correccional* in its minimum degree under section 159 of the Revised Penal Code. And if the penalty remitted by the granting of the conditional pardon be higher than six years, the person violating the pardon may be arrested and reincarcerated to serve the unexpired portion of his sentence by order of the President of the Philippines under section 64 (*i*) of the Revised Administrative Code; and besides he may also be prosecuted and convicted by the courts to suffer again the unremitted portion of his original sentence under section 159 of the Revised Penal Code.

The provisions of section 9 of Act No. 4103 creating the Board of Indeterminate Sentence to the effect that "nothing in this Act shall be construed to impair or interfere with the powers of the President as set forth in section sixty four (*i*) of the Revised Administrative Code," can not be construed to ratify a power not granted to the President by said Section, or if granted already,

withdrawn by section 159 of the Revised Penal Code, as above stated.

The contention of the Respondent that "the legislature has intended the two legal provisions—article 159 of the Revised Penal Code and section 64 (*i*) of the Revised Administrative Code—to coexist as two alternative proceedings against those who violate the conditions of a conditional pardon, and the State may chose either, is not supported by the letter and spirit of those provisions and the rules of statutory construction as above shown. Besides it is against the public policy of not penalizing a defendant charged with the commission of an act which constitutes a public offense without a previous hearing, and also against common sence. Of course, it is but natural that the prosecution would not chose to prosecute a defendant under section 159 of the Revised Penal Code, if he can have the prisoner summarily recommitted to serve the unexpired portion of his original sentence by order of the Chief Executive under section 64 (*i*) of the Revised Administrative Code.

Wherefore, the petitioner's immediate release from custody is hereby ordered, without prejudice to his being prosecuted for violation of conditional pardon under section 159 of the Revised Penal Code. So ordered.

Petition denied.

[No. L-2027. October 14, 1950]

Testate estate of Alejandro Gonzales y Tolentino. MANUEL GONZALES, oppositor and appellee, *vs.* MANUELA VDA. DE GONZALES, ALEJANDRO GONZALES, Jr., MANUELA GONZALES DE CARUNGCUNG, and JUAN GONZALES, petitioners and appellants.

DESCENT AND DISTRIBUTION; JUDGMENTS; ORDER OF PROBATE COURT ACQUIESCED IN BY HEIRS AND BECAME FINAL; ESTOPPEL TO QUESTION IT.—An order of a probate court giving right to an heir as a donee to select a portion of the testate estate as his donation from the subdivision plan made and prepared by the other heirs which order was acquiesced in by the latter, can thereafter no longer be a proper subject for complaint as it constitutes an estoppel aside from the fact that it had become final and unassailable.

APPEAL from an order of the Court of First Instance of Manila. Barrios, J.

The facts are stated in the opinion of the court.

Albert, Reyes, Guerrero & Roces for appellants.
Vicente J. Francisco for appellee.

MONTEMAYOR, *J.:*

Alejandro Gonzales y Tolentino died testate in 1932, leaving as forced heirs his widow Doña Manuela Ibarra de Gonzales and his five legitimate children—Alejandro,

Jr., Leopoldo, Manuela, Juan, and Manuel, all surnamed Gonzales. Among the properties he left are several big parcels of land or haciendas, among which is the Hacienda Toboy, lot 7646, Asingan cadastre, which now concerns us. His will was probated on August 27, 1932 in S. P. No. 42412 of the Court of First Instance of Manila. Under said will, the testator gave the strict legitime and the 1/3 available for betterment to his aforesaid five legitimate children, the betterment subject to the usufruct of his widow. The third portion for free disposal was bequeathed to his seven illegitimate children, a brother and two sisters-in-law in equal shares. But long before his death the testator in 1924 had given by way of donation *propter nuptias* to his son Manuel Gonzales (appellee in this case) 1/5 of Hacienda Toboy. It is this 1/5 portion of said Hacienda and its selection by the donee that motivated the present proceedings.

Since the probate of the will in 1932, nothing appears to have been done by the heirs and legatees in the way of partitioning the estate among them according to the terms of the said instrument until February 24, 1938, when a project of partition was prepared and filed in court and finally approved by the probate court on July 11, 1942. Under said project of partition, 1/5 or 5/25 of Hacienda Toboy was to be set aside for Manuel Gonzales and his wife Lourdes del Prado as the donation *propter nuptias* made in 1924 by the testator. The remaining 4/5 was to be divided among the five children, including Manuel Gonzales, so that each child was to have 4/25 of Hacienda Toboy. The Hacienda Masilsil at Umingan, Pangasinan would go to the legitimate children, excluding Manuel Gonzales; Hacienda Carosalizan at Umingan, Pangasinan and Hacienda Bued would be given to the widow Manuela Ibarra; and Hacienda Evangelista at Umingan, Pangasinan was to go to the testator's brother and two sisters-in-law and to his seven illegitimate children.

Notwithstanding the project of partition and its approval by the court, it seems that no partition was made of the estate. So, on November 5, 1943, a proposed amicable settlement was presented in court, wherein the heirs among other things agreed and considered binding and in full force the project of partition. This amicable settlement was approved by the lower court on December 2, 1943.

Again, nothing seems to have been done to distribute the property, at least as regards Hacienda Toboy.

Evidently, for the purpose of partitioning Hacienda Toboy, the legitimate children with the exception of Manuel Gonzales petitioned the court to allow them or rather their surveyor to enter said Hacienda in order to make

a subdivision survey and plan of the same. Over the objection of Manuel Gonzales the petition was granted and the result of the survey appears to have been embodied in the proposed subdivision plan, annex X, whereby the whole Hacienda Toboy with the exception of a portion set aside as the donation *propter nuptias* to Manuel Gonzales and his wife, was divided into five equal parts, said to be equal not only in area but also in value because each one of the five heirs is supposed to receive the same area of rice land, corn land and residential land.

Armed with this subdivision plan, annex X, the heirs, excluding Manuel Gonzales filed a motion in court requesting that the share of each heir in Hacienda Toboy be designated in accordance with said subdivision plan.

By order of May 10, 1946, the trial court after hearing the parties, directed the administrators (1) to deliver to the heirs of the testator their respective shares in accordance with the project of partition already approved; and (2) to deliver to the said heirs share and share alike the remainder of the Hacienda Toboy after Manuel Gonzales had selected within ten (10) days the portion donated to him.

On May 22, 1946, Manuel Gonzales filed a motion for reconsideration of the above order asking among other things, for extension to thirty days of the period of ten days granted to him within which to make the selection, so as to give him an opportunity to secure the services of a private surveyor to go over the property.

On July 5, 1946, the other heirs filed an answer to the motion of Manuel Gonzales claiming that the ten-day period granted to Manuel Gonzales, even including the thirty days extension requested by him within which to make his selection, had long expired, and that consequently, nothing more remained to be done except for the administrators to distribute the Hacienda among the various heirs. They asked that "the order of 10th May 1946, be left intact."

By order of September 21, 1946 (this order is involved in the present appeal), the trial court gave Manuel Gonzales thirty days within which to select the portion of Hacienda Toboy donated to him and directed the administrators to deliver to the heirs their respective portions in the said Hacienda after Manuel had made his selection of the donation. This order of September 21, 1946, was appealed by the four co-heirs of Manuel Gonzales to the Supreme Court where it was docketed under G. R. No. L–1254. On May 21, 1948, this court affirmed said order with costs against appellants, at the same time instructing the parties and the lower court to take steps for the prompt termination of the testate proceedings of Alejandro Gonzales y Tolentino.

On October 9, 1946, Manuel Gonzales filed a motion in the trial court informing said tribunal that pursuant to its order of September 21, 1946, he had selected lots 5 and 8 (contiguous lots) of the subdivision plan of Hacienda Toboy (Annex X), submitted by his co-heirs; that since the combined area of said two lots was 420,849 square meters, there was an excess of 21,659.6 square meters over the donation of 1/5 of the Hacienda which 1/5 is equivalent to 399,189.4 square meters, but that this excess may be deducted from his additional 1/5 share of the remaining portion as one of the five heirs, which 1/5 share is equivalent to 319,351.52 square meters. He asked that said two lots 5 and 8 selected by him be adjudicated to him and that the administrators be ordered to deliver them to him, including his 1/5 share in the remainder of Hacienda Toboy.

On October 23, 1946, the other heirs filed a written opposition to Manuel's motion objecting to it on the ground that Manuel Gonzales had allowed the ten-day period granted to him by order of the court of May 10, 1946 within which to make his selection to elapse; that the final accounts of Manuel Gonzales as administrator of the estate from August, 1942 till May, 1946 had not yet been submitted in court, and that if lots 5 and 8 (Hacienda Toboy) were adjudicated to him as he requested, his co-heirs would be deprived of the means to enforce their claims against him; and finally, that inasmuch as the court order of September 21, 1946 had been appealed, matters should be maintained in status quo until the validity of the order appealed from was decided.

No court action seems to have been taken on that particular issue.

On November 29, 1946, Manuel Gonzales filed a motion wherein he stated among other things that as a donee of the 1/5 portion of Hacienda Toboy he was entitled to about 40 hectares, and that as a co-heir he had a right to about 32 hectares, or a total area of about 72 hectares; that while the widow and the legatees and other heirs had been enjoying the other properties of the estate since 1943, he, on the other hand had not shared in any property of the estate of any substantial value. So, he insisted that the administrators be ordered to immediately deliver to him lots 5 and 8.

On December 4, 1946, the other heirs filed written opposition to the last motion of Manuel Gonzales stating among other grounds that said Manuel Gonzales had not filed his last account as administrator of the estate; that he owed the estate a substantial sum which is more than his share in the estate as heir; that because of the fault of said Manuel Gonzales when he was administrator, the estate is still indebted to various persons and the products

of the Hacienda Toboy could not be distributed until said debts were paid, and that inasmuch as the order of the court of September 21, 1946 was pending appeal, the administrators should retain any share of Manuel Gonzales in the estate in order to satisfy any claim of his co-heirs in the event that the order appealed from was eventually reversed by the Supreme Court.

On January 21, 1947 (this order is also involved in the present appeal), the trial court acting upon the motion of Manuel Gonzales of November 29, 1946 and finding it well founded despite the written opposition of his co-heirs of December 4, 1946, ordered the two administrators to deliver said lots 5 and 8 of Hacienda Toboy to Manuel Gonzales.

A copy of the said order of January 21, 1947 was received by counsel for the appellants and co-heirs on January 24, 1947.

On March 13, 1947, Manuel Gonzales filed a motion in the trial court, seeking among other things to compel the two administrators to comply with the order of January 21, 1947 ordering them to deliver lots 5 and 8 of Hacienda Toboy to him.

On March 17, 1947, the other heirs filed a petition in the trial court to set aside the order of January 21, 1947 on the ground that Hacienda Toboy consists of rice land, corn land and portions which are poor, sterile or barren, only good for residential purposes, and that to do justice to each of the five heirs, after excluding the portion donated to Manuel Gonzales, the remainder was divided into five portions approximating each other in value, giving to each of the five heirs the same area of rice land, corn land and residential land as appears in the subdivision plan, annex X; that the two lots 5 and 8 selected by Manuel Gonzales as his donation are both rice lands and besides exceeding in area ⅕ of the total area of the Hacienda, they also exceeded the value of said ⅕ portion, besides disrupting the whole scheme of the proposed subdivision; that as a matter of fact, the subdivision plan annex X, had not yet been approved by the court and consequently, Manuel Gonzales had no right to make his selection of lots therefrom; that although the order of January 21, 1947 was received by counsel for the movants on January 24, 1947, in his office, at the time, said counsel was in his home, sick, and that thereafter on various days in the month of January and the following month of February he had court trials or hearings and had no opportunity to be informed of the said order until March 12, 1947. He reiterates his prayer that the order of January 21, 1947 be set aside, and that an order be issued approving the proposed subdivision

or partition of Hacienda Toboy, annex X, and fixing a period within which the heirs could select their shares.

On March 29, 1947, Manuel Gonzales filed a long written opposition and motion enumerating and describing in detail the court proceedings since the will was first presented for probate, and emphasizing the long delay in the distribution of the property, especially to him as donee and as heir, and the prejudice caused to him by such delay. He asked that the petition of March 17, 1947 be denied, and that the two administrators be cited for contempt of court for refusing to deliver to him the two lots 5 and 8 of Hacienda Toboy, and that the Provincial Sheriff of Pangasinan be ordered to deliver to him these two lots.

On September 25, 1947, the trial court issued an order reviewing in detail as did Manuel Gonzales in his last motion the proceedings had in court from the beginning, stating among other things that the co-heirs of Manuel Gonzales did not appeal from the order of May 10, 1946 which had ordered the administrators to deliver to the heirs share and share alike the remainder of Hacienda Toboy after Manuel Gonzales had selected the portion donated to him; that the court by its order of September 21, 1946, reiterated the right of Manuel Gonzales to make his selection of the portion donated to him, and that although the heirs and widow appealed from said order of September 21, 1946, the appeal did not affect the final character of the order of May 10, 1946; that the selection made by Manuel Gonzales of lots 5 and 8 was in accordance with the orders of the court of September 21, 1946 and of January 21, 1947 which were already final and executory, and it ordered that lots 5 and 8 be delivered to Manuel Gonzales. The court denied the motion of the widow and the other heirs dated March 17, 1947 and maintained its order of January 21, 1947 for having become final and executory.

A motion for reconsideration filed by the other heirs having been denied for lack of merit, said heirs filed this appeal making the following assignment of errors:

I

"The lower court erred in holding that the order dated 21st September, 1946, which is on appeal, is final and executory.

II

"The lower court erred in allowing oppositors and appellees to select their share contrary to the proposed project of partition."

The question involved in the first error assigned has become moot. As already stated at the beginning of this decision, appeal was taken by the same petitioners-appellants in the present case from that order of the trial court of September 21, 1946, to this court under G. R. No. L–1254, and that said order was affirmed in our decision

promulgated on May 21, 1948. Moreover, the issue involved in the appeal taken from said order of September 21, 1946, did not affect in any manner whatsoever the question raised in the present appeal, namely, the right of Manuel Gonzales to select the 1/5 portion of Hacienda Toboy donated to him by his father.

Going to the second error assigned, we find that it is now too late for the appellants to raise the point of the propriety of allowing Manuel Gonzales to select his share contrary to the proposed project of partition. What was really done by the trial court was to allow him to select not his share as an heir but his 1/5 portion as a donation *propter nuptias*. We repeat that it is now too late to raise this point. This right of selection was first granted Manuel Gonzales in the order of the court of May 10, 1946. It was not questioned by the appellants. On the contrary, the appellants in their pleading of July 5, 1946, called the attention of the court that inasmuch as the ten-day period granted to Manuel Gonzales within which to make his selection had already elapsed, appellants prayed that the order of May 10, 1946 be held intact. In other words, the propriety and correctness of giving Manuel Gonzales the right or privilege to select his 1/5 portion as donation *propter nuptias* was never questioned. It was acquiesced in by the appellants. As a matter of fact, counsel for appellants in his brief, pages 21–22, as well observed by counsel for appellee, states that "the only right acquiesced to by the heirs was for him (Manuel Gonzales) to choose his 1/5 portion as donation *propter nuptias*." This right of selection granted by the trial court in its order of May 10, 1946 was reiterated in the order of September 21, 1946, and on appeal this order of September 21, 1946, was affirmed by the Supreme Court.

It only remains for us to determine the propriety and correctness of the appellee's selection of lots 5 and 8 of the subdivision plan, annex X, of his 1/5 portion as donation *propter nuptias*. We see the point of the appellants that these two lots are both rice lands and besides the fact that their total area exceeds 1/5 of the Hacienda, they do not include any of the poorer portions of the Hacienda such as corn land or the sterile land good only for residential purposes. We should remember however, that the right accorded Manuel Gonzales to make his selection was unqualified. Of course, he should not have been allowed to abuse that right. But he could not very well be expected to select any one of the subdivision made by the appellants in their subdivision plan, annex X. In fact, said plan gave no choice nor contemplated any selection whatsoever. Appellants arbitrarily set aside without consulting the appellee the portion suppose to represent his donation. In the first place, that portion set aside with an

area of 297,969 square meters is much less than 1/5 or 5/25 of the whole Hacienda, which should correspond to the donation according to the very project of partition previously prepared and filed by the appellants themselves and approved by the court. It is even less than 1/5 of the remaining 4/5 or 4/25 of the Hacienda, that should correspond to one of the five heirs, both in area and in value according to the very computations and valuations given by the appellants in their subdivision plan, annex X. For instance, rice land is supposed to be the most valuable portion of the Hacienda. While each heir according to said subdivision plan gets about 21 hectares of rice land as part of his 4/25 portion, the appellee who as donee has a bigger portion because he has 5/25 is assigned only 18-1/2 hectares of rice land. In other words, the whole scheme of the subdivision plan (Annex X) was wrong. It is contrary to and violates the basic project of partition agreed to by the parties and approved by the court. What should have been done was to divide the whole hacienda into five portions, even according to the theory of the appellants, equal both in area and in value, and then let the appellee select any one of those five portions as his donation. After his selection the four remaining portions should again be consolidated and divided into five equal parts to be assigned to the five heirs either by lottery or in some other manner agreeable to them. But this was not done.

It is true that the selection made by the appellee is rather unjust to his co-heirs but as his counsel states in his brief, there might be some reasons behind this seeming injustice which may have prompted the lower court in letting Manuel Gonzales select his donated portion in the first place, and later on sanctioning his selection. Although the donation was made way back in 1924, the donee does not seem to have ever received or occupied the land donated or enjoyed its fruits. Again, as stated in his motion of November 29, 1946, and not disputed or denied by the appellants in their subsequent pleadings, although his co-heirs had enjoyed other properties of the estate of their deceased father since 1943, he, on the other hand, had not had that enjoyment or benefit. Then, according to the project of partition prepared by the heirs and approved by the court, the whole Hacienda of Masilsil at Umingan, Pangasinan, was given to the appellants to the exclusion of the appellee.

But we note a flaw in the computation of the appellee of the area which he claims as his donation of 1/5 of the Hacienda. He bases his computation on the total area of 1,995,947 square meters. From this should be deducted 9,482 square meters covered by roads, leaving a net area of 1,986,465 square meters. One-fifth of this net area will

constitute the extension of the donation for purposes of computing the excess of the total of the two lots 5 and 8.

In conclusion, we find that the right given by the trial court to Manuel Gonzales to select his 1/5 portion of Hacienda Toboy as his donation *propter nuptias* was not only not objected to but was also acquiesced in by the appellants and it is now too late to raise the point; that his selection of lots 5 and 8 of subdivision plan, annex X, has been approved by the trial court and any error or impropriety committed, was in part due to the fault of the appellants in having prepared and presented in court a plan which did not conform to the scheme and theory of the project of partition approved by the court; and that furthermore, the appellants did not question in time the approval by the court of his selection of lots 5 and 8.

In view of the foregoing, the order appealed from is hereby affirmed. To do justice to the appellants, and to carry out as much as possible the scheme of the project of partition, after separating lots 5 and 8, a new subdivision plan of the Hacienda may be made so as to divide it into five portions among the five heirs, the four portions corresponding to each of the appellants to be each equal in area as well as in value, and the fifth portion to correspond to the appellee to be less in extension because of the excess incurred in by him in selecting lots 5 and 8 and, possibly, also less in value to make up for the fact that his selected lots 5 and 8 are supposed to comprise the most valuable portions of the Hacienda. No pronouncement as to costs.

Ozaeta, Parás, Feria, Pablo, Bengzon, Tuason, and *Reyes, JJ.*, concur.

Order affirmed.

[No. L-2213. October 14, 1950]

ESPIRIDION M. DRILLO, plaintiff and appellant, *vs.* PEDRO BUKLATAN ET AL., defendants and appellees

1. PARTIES; PRESIDENT OF LABOR UNION DULY REGISTERED; CAPACITY TO SUE FOR AND IN BEHALF OF SAID UNION.—A labor union duly registered under Commonwealth Act No. 213, has capacity to sue as a juridical entity and an action brought by its president in the latter's name is improper.
2. ACTION; COURTS; JURISDICTION; CAUSES OF ACTION AGAINST DEFENDANTS EACH NOT EXCEEDING ₱2,000; ARISING FROM DIFFERENT TRANSACTIONS.—When an action is composed of separate claims against several defendants of different amounts, each of which is not more than ₱2,000, each claim should be filed with the corresponding justice of the peace court. And when the several claims do not arise from the same transaction or series of transactions and there are no questions of law or of fact common to all the defendants, their joinder is improper.

APPEAL from an order of the Court of First Instance of Leyte. Piccio, J.

The facts are stated in the opinion of the court.

Jorge B. Delgado for appellant.

Pastor Salazar, Marcelino R. Veloso, Antonio V. Benedicto and *Antonio Montilla* for appellees.

MORAN, *C. J.*:

This is an appeal taken by plaintiff from an order dismissing his complaint on motion of the defendants.

The complaint contains four causes of action. In the first, plaintiff, as President of the Leyte United Workers, seeks to recover from several defendants, the amounts of money which the latter, in their respective capacities as chief foreman and foreman, have been collecting from several groups of laborers, as their contribution to the funds of the Leyte United Workers. The motion to dismiss against the first cause of action is based upon the ground that the Leyte United Workers, being a duly registered Labor Union under Commonwealth Act No. 213, has capacity to sue, and therefore, the action should have been brought in its name. Plaintiff-appellant admits that the Leyte United Workers has juridical capacity to sue. If this is so, then the action should be brought in its own name, and not in the name of its president, under Rule 3, section 2.

Furthermore, the first cause of action is composed of separate claims against several defendants of different amounts each of which is not more than ₱2,000 and falls under the jurisdiction of the justice of the peace court under section 88 of Republic Act No. 296. The several claims do not seem to arise from the same transaction or series of transactions and there seem to be no questions of law or of fact common to all the defendants as may warrant their joinder under Rule 3, section 6. Therefore, if new complaints are to be filed in the name of the real party in interest they should be filed in the justice of the peace court.

The second cause of action is directed against the International Trust Corporation and Pacific Copra Export Company which are alleged to have entered into a contract with the Leyte United Workers whereby they agreed to increase by 20 per cent the wages of their laborers who were members of the Leyte United Workers and they failed to fulfill the terms of such agreement. It appears, however, that the Leyte United Workers has already applied with the Court of Industrial Relations for increase of wages of their laborers working with the two defendant corporations, and it abandoned the supposed agreement regarding the increase of 20 per cent after the two de-

fendant corporations denied having entered into such agreement, and instead it claimed a general increase of 50 per cent which the Court of Industrial Relations refused to grant. Under such circumstances, the Leyte United Workers cannot now be allowed to press upon the supposed agreement of 20 per cent increase which was abandoned in the Court of Industrial Relations which is the court with jurisdiction over that subject matter.

The third cause of action is for *certiorari* against the Secretary of Labor for having granted licenses to new unions, namely, the Leyte Stevedoring and Terminal Dock Workers Union and the Visayan Workers Union, the registration of which is alleged to be detrimental to Leyte United Workers. It is alleged that the new labor unions were organized by old members of the Leyte United Workers, with the aid of the employers, and the result may be the death of the Leyte United Workers. It is maintained that the action of the Secretary of Labor in approving the application of the said new labor unions constitutes an excess of jurisdiction and grave abuse of discretion.

The petition for *certiorari* does not lie because the Secretary of Labor did not exercise judicial function. Furthermore, there is no allegation that the new labor unions have the purpose of undermining or destroying the constituted Government or of violating any law or laws of the Philippines, and therefore, they cannot be denied registration and permission to operate under section 2, of Commonwealth Act No. 213. (Umali *vs.* Lovina, G. R. No. L–2771, April 29, 1950.)

The fourth claim alleged in the complaint is a petition for declaratory relief involving practically the same questions raised in the third cause of action.

For all the foregoing, the order of dismissal appealed from is affirmed, the costs to be paid by appellant.

Ozaeta, Parás, Pablo, Bengzon, Tuason, Montemayor, and *Reyes, JJ.*, concur.

Order affirmed.

[No. L–2306. October 14, 1950]

PACIENCIA ANTEOJO, NESTOR VASQUEZ, ANTONIO VASQUEZ, and JOSEFA VASQUEZ, petitioners, *vs.* THE COURT OF APPEALS (SECOND DIVISION), ROSA VILLA, PAZ NAZARENO, EUSEBIO NAZARENO, and ELISEO NAZARENO, respondents.

HUSBAND AND WIFE; CONJUGAL PROPERTY; VALIDITY OF SALE MADE BY SURVIVING SPOUSE; ACTION TO RECOVER BY CHILDREN AFTER ATTAINING OF AGE IS NOT RATIFICATION.—A sale with a right to repurchase of the entire conjugal partnership property by a surviving spouse is valid only as to one-half thereof,

and with respect to the other half which belongs to the children it is invalid. The bringing of an action by the children after attaining majority, to recover their share invalidly sold by their surviving parent, cannot be considered as a ratification of the aforesaid illegal sale.

PETITION to review on certiorari a decision of the Court of Appeals.

The facts are stated in the opinion of the court.

Claro M. Recto for petitioners.
Manuel O. Chan for respondents.

MONTEMAYOR, *J.:*

This is a petition for the review of a decision of the Court of Appeals, second devision, which reversed the decision of the Court of First Instance of Cavite and dismissed the complaint filed in the latter court.

As regards the status of the land in dispute, lot No. 1983 of the Naic Estate, the Court of Appeals found that in 1911, plaintiff Paciencia Anteojo and her now deceased husband Simplicio Vasquez bought from the Bureau of Lands said lot on the installment plan. Upon payment of the last installment, the corresponding sale certificate was issued in 1928 in favor of Paciencia Anteojo presumably because Simplicio was already dead. The Court of Appeals found further that the lot belonged to the conjugal partnership, it having been acquired for a valuable consideration during the marriage and at the expense of the common fund. Under the law, we have to accept these findings of the Court of Appeals.

On May 29, 1931, Paciencia sold the lot to the spouses Elias Nazareno and Rosa Villa for the sum of ₱3,000, as evidenced by the deed, Exhibit 7. The sale was approved by the Director of Lands. On the same date of Exhibit 7, the vendees executed an instrument (Exhibit A) wherein they stated that they accepted the sale in their favor; that they knew that Paciencia, the vendor, was acting only in representation of her children, and they expressed their readiness and willingness to return said lot to Paciencia and to her children when the latter reached the age of majority, upon return to them (vendees) of the sum of ₱3,000.

On August 1, 1944, Paciencia and her three children Nestor, Josefa and Antonio, commenced the present suit in the Court of First Instance of Cavite against Rosa Villa and her children to recover the said lot No. 1983, including the products of the land at the rate of 100 cavans of palay net a year. The trial court regarded the lot as the exclusive property of Paciencia's children, perhaps because of the statements of the vendees in Exhibit A that in the sale of the lot to them, Paciencia was only

acting in representation of her children. The trial court equally considered the suit as one to compel the defendants to comply with their undertaking to return the land when the children of Paciencia attained majority, and not an action to enforce a repurchase of the lot under a theory of sale with *pacto de retro*. Judgment was rendered ordering defendants to return the lot to the plaintiffs upon payment by the latter of ₱3,000, and also to deliver to the plaintiffs 60 cavans of palay net for every agricultural year since August, 1944 or its equivalent in money at the rate of ₱25 a cavan.

On appeal by the defendants to the Court of Appeals, said court as already stated, found and ruled that that lot No. 1983 was conjugal property. It also found and held that the contract evidenced by Exhibits A and 7 was one of sale with right of repurchase whose maximum period under article 1508 of the Civil Code cannot exceed 10 years; that said period expired on May 29, 1941; that altho in 1931 Paciencia could dispose of only her one-half share in the said conjugal property because the other half belonged to her children, said children by bringing the present action at a time when they were already of age, ratified said transaction, and that they may not now question the validity of the same, this, aside from the fact that the validity of said sale was not raised in the trial court. Said appellate court also held that altho in May, 1941 when the maximum period of repurchase expired, two of the children of Paciencia were still minors, the saving clause contained in section 42 of the Code of Civil Procedure, giving minors or persons under disability three years after said disability is removed within which to present action, does not favor the other child because said child under no disability is a mere co-owner and not a joint tenant; and that even the two children who were minors when the period for repurchase expired, are not protected for the reason that the statute of limitations being remedial in nature, is not applicable to the period of redemption in the case of sale with *pacto de retro*, and that besides this, the provisions of article 1932 of the Civil Code on prescription operate on all persons, including minors.

Dissatisfied with the decision of the Court of Appeals, plaintiffs have filed the present petition for review, making the following assignment of errors:

I

"The respondent Court of Appeals (second division) committed an error of law in not declaring, on the basis of its own statement of facts, the contract marked Exhibit 7 as null and void.

II

"The respondent Court of Appeals (second division) erred in holding that the validity of the sale of the land in question was not raised in the court *a quo*, and that it could not consequently determine the said question.

III

"The respondent Court of Appeals (second division) committed an error of law in holding that the period of prescription established in article 1508 of the Civil Code may run against a minor who has no legal guardian.

IV

"The respondent Court of Appeals (second division) committed an error of law in not holding that the right of action of petitioners Josefa Vasquez and Antonio Vasquez inures to the benefit of their other co-petitioners."

Under the view we take of the case, we find it unnecessary to discuss the last two errors assigned. It is clear that in 1931, Paciencia could validly dispose of only one-half of the lot in question as her share in said conjugal property. The deed of sale, Exhibit 7, was therefore invalid as regards the other half of the lot.

We do not agree to the theory of the Court of Appeals that by bringing the present suit the children of Paciencia ratified the sale. That is too technical and strict a view of the implication of bringing the action. We are more inclined to agree with the trial court that the purpose of plaintiffs in bringing the action was not to redeem the land but rather to compel the vendees-defendants not only to comply with their undertaking to reconvey the property when they (the children) became of age, but also to return what belonged to them but which had invalidly and unjustly been disposed of by their mother. This view of the case is reinforced by the fact that in their complaint, plaintiffs asked the court to order the defendants to return the lot to them and they (plaintiffs) did not offer to return the ₱3,000 sales price.

With regard to the holding of the Court of Appeals that the question of the validity of the deed of sale was not raised in the trial court, we also disagree. It is true that in their complaint plaintiffs made mention of the deed of sale (Exhibit 7) whereby Paciencia sold the entire lot, and in the fifth paragraph thereof, said plaintiffs even stated that one year before filing the complaint they tried to repurchase the lot and recover its possession by offering the sales price. They did not, however, say that they agreed to the sale or ratified the act of their mother, and notwithstanding their efforts to repurchase the land in 1943, as already stated when they brought the action in 1944, the plaintiffs no longer wanted to repurchase the

lot but merely sought to get it back even without returning the sales price. Their attitude and stand when they brought the action that they did not agree to the sale made by their mother and that they had a right that they were trying to enforce to get the lot back, can be gathered from their pleading without difficulty. In the prayer of their complaint, plaintiffs asked that defendants be ordered to return the lot, and not to resell it, to them. Their theory was that they were not relying on the validity of the sale and merely seeking compliance with the promise to resell, but they were attacking the validity of the transaction and wanted to get their property back. Besides, as counsel for the petitioners rightly contends, the very defendants in their amended answer indirectly raised the question of validity of the sale when they claimed that the children of Paciencia had confirmed the sale and assignment made by their mother, and alleged in paragraph 5 of their affirmative and special defenses that the plaintiffs were forever estopped from questioning the validity of the sale and assignment made by Paciencia. This can only mean that said plaintiffs were trying to question the validity of the sale under Exhibit 7. We believe that the question of the validity of the sale made by Paciencia was raised in the trial court.

In conclusion, we find and hold that altho Paciencia Anteojo could and did sell under *pacto de retro* one-half of lot No. 1983 which belonged to her, and that she failed to repurchase said portion within the period fixed by law, the sale with respect to the other half which belonged to her children was invalid, and that furthermore, in bringing the present action, said children did not ratify the illegal sale made by their mother.

The defendants are hereby ordered to return and deliver to the plaintiffs one-half (½) of lot No. 1938. Paciencia Anteojo on her part will pay to said defendants the sum of ₱1,500. The defendants will also deliver to the plaintiffs 30 cavans of palay net or its equivalent in the sum of ₱25 per cavan, yearly, as found and ordered by the trial court, from August, 1944 until the year 1946. This court understands that the price of palay after 1946 had substantially decreased and we find that an average price of ₱16 per cavan of palay beginning with 1947 up to 1950 would be fair.

As above modified, the decision of the Court of Appeals is hereby affirmed. No pronouncement as to costs.

Moran, C. J., Ozaeta, Parás, Feria, Bengzon, and *Tuason, JJ.,* concur.

PABLO, *M.,* concurrente y disidente:

Estoy conforme con la conclusión legal de que el lote era de la propiedad ganancial de Simplicio Vasquez y

Paciencia Anteojo. Por ministerio de la ley de sucesión, al fallecimiento del primero, la mitad del lote pertenece ya a Paciencia y la otra mitad a sus hijos Nestor, Josefa y Antonio Vasquez.

Paciencia no podía legalmente vender todo el lote: solo podía disponer de la mitad que le pertenece y su usufructo viudal. Pero no existe el menor indicio de que lo haya dispuesto a favor de los demandados.

Los hermanos Nestor, Josefa y Antonio tienen derecho de reivindicar su participación de cualquiera, y los demandados deben entregarles inmediatamente, pues la venta hecha a su favor es absolutamente nula. Y la entrega no debe depender del pago que hiciere Paciencia de la cantidad de ₱1,500, como así dispone la decisión. Si, por algún motivo, no estuviese en condiciones ella de hacer el pago, los hermanos Vasquez serían privados de la posesión de la mitad del lote. Creo que eso es injusto. Por esta razón, no estoy conforme con la parte dispositiva de la decisión.

En mi opinión, debe ordenarse la inmediata entrega por los demandados de la mitad del lote a los hermanos Nestor, Josefa y Antonio, sin condición alguna, y que se condene a Paciencia Anteojo a restituir a los demandados la suma de ₱1,500.

Judgment modified.

[No. L-2097. October 16, 1950]

ORIENTAL SAWMILL, plaintiff and appellant, *vs.* MANUEL TAMBUNTING and ANGEL DE LEON ONG, defendants and appellees.

INTERPLEADER; OWNERSHIP OF LEASED PROPERTY IN LITIGATION; LESSEE DOUBTS TO WHOM TO PAY RENTS.—In case the ownership of a leased real property is under litigation between two claimants and the lessee thereof has reasonable grounds to doubt as to whom he should make payments of the rents, the filing of a complaint for interpleader by the latter is proper.

APPEAL from an order of the Court of First Instance of Manila. Amparo, J.

The facts are stated in the opinion of the court.

P. L. Meer for appellant.
Jose S. Sarte for appellee Tambunting.

MORAN, *C. J.:*

This is an action for interpleader filed by Oriental Sawmill against Manuel Tambunting and Angel de Leon Ong with respect to the rental of a vacant lot behind apartment No. 343 Tanduay, Quiapo, Manila, occupied by the plaintiff. The latter alleges that defendants Manuel Tambunting and Angel de Leon Ong have conflicting claims

on said rental, and it brought the action for the purpose of compelling them to interplead and litigate their conflicting claims for judicial determination. The defendant Manuel Tambunting filed a motion to dismiss on the ground of *res adjudicata* which was granted by the court. Hence, this appeal by plaintiff.

The facts are as follows: In the Municipal Court of Manila a suit was filed by Manuel Tambunting against Pio Barretto, general manager of Oriental Sawmill, for ejectment, the property involved being the same lot located at No. 343 Tanduay, Quiapo, Manila. The defendant Angel de Leon Ong was allowed to intervene in that suit. After trial a judgment was rendered in favor of the plaintiff, Manuel Tambunting, and against the defendant, Pio Barretto, ordering the latter to vacate the premises and to pay the former the sum of ₱300 as damages for the use and occupation thereof, plus the sum of ₱500, value of the garage removed by defendant, and to pay the costs. No mention, however, was made of the intervenor Angel de Leon Ong, whose appeal to the court of first instance was filed out of time and was dismissed for that reason. Pio Barretto appealed also to the court of first instance where he and plaintiff Manuel Tambunting reached an amicable settlement whereby the defendant withdrew his appeal and plaintiff waived his right to collect damages and allowed the defendant to use the property for an indefinite period of time provided said defendant pays ₱130 monthly rent from April, 1947.

The rents corresponding to the period from April to September of 1947, amounting to ₱780, was deposited in court upon the filing of the complaint for interpleader. In the complaint it is alleged that said rents are being claimed by both Manuel Tambunting and Angel de Leon Ong and since plaintiff knows not whom to make payment, he brought the action for interpleader. It appears that the property involved in this case belonged originally to Manuel Tambunting who allegedly sold it to Angel de Leon Ong on April 15, 1944. There are several "accesorias" (apartments) on the property which at the time of the sale were leased to Manuel Tambunting by the purchaser Angel de Leon Ong. Tambunting, in turn, subleased these "accesorias" to several persons some of whom are the herein plaintiff Oriental Sawmill and one Alfonso Pagkalinawan. At present, there are three civil cases pending between Manuel Tambunting and Angel de Leon Ong regarding the ownership of the property. In one case, Ong seeks to revoke the lease executed in favor of Tambunting and to eject him from the premises upon the ground that Tambunting subleased the property without the written consent of Ong. Tambunting in his answer raised the question of ownership, and the case

was referred to the Court of First Instance of Manila where it was docketed as civil case No. 2977.

Upon the other hand, Tambunting filed an action against De Leon for the annulment of the supposed contract of sale upon the ground of duress. This case was docketed as civil case No. 815 in the Court of First Instance of Manila where, after trial, judgment was rendered in favor of De Leon with the statement that no duress had attended the sale and Angel de Leon Ong was, therefore, the owner of the property. The case is now in the Court of Appeals wherein it is docketed as case No. 2491–R. There is another case filed by Tambunting against De Leon in the court of first instance seeking to annul the sale because of the purchaser's citizenship but the case was decided against Tambunting upon the ground of *res adjudicata.* That case is pending appeal in this court.

Considering these different suits between Tambunting and De Leon regarding the ownership of the property, plaintiff Oriental Sawmill has reasonable grounds to doubt as to whom it should make payments of the rents, and consequently, its complaint for interpleading is proper. We so held in a similar case under similar facts. In Pagkalinawan *vs.* Rodas (G. R. No. L–1806, February 25, 1948), Manuel and Alfonso surnamed Pagkalinawan were like Oriental Sawmill, sublessees of part of the same property supposedly sold by Tambunting to De Leon. And, because of the conflicting claims on the rental between Tambunting and De Leon, the two sublessees filed an action for interpleader against the two conflicting claimants. We held that that action was proper. And in De Jesus *vs.* Sociedad Arrendataria de Galleras de Pasay et al. (23 Phil., 76), it was held that a lessee who is in doubt as to the person to whom he should pay the rent because the property leased is claimed by several persons may properly bring an action for interpleader against such persons.

It is true that Angel de Leon Ong was allowed to intervene by the municipal court in the suit by ejectment filed by Tambunting against the Oriental Sawmill and that Ong's appeal to the court of first instance was taken out of time and dismissed for that reason; it must be noted, however, that neither the municipal court nor the court of first instance on appeal had jurisdiction to settle or determine in that suit the question of ownership between Tambunting and De Leon.

From the foregoing, the order of dismissal appealed from is reversed and the case remanded to the court below for further proceedings, the costs to be paid by appellee.

Ozaeta, Parás, Pablo, Bengzon, Tuason, Montemayor, and *Reyes, JJ.,* concur.

Order reversed and case remanded for further proceedings.

[No. L-2779. October 18, 1950]

DANIEL SANCHEZ ET AL., plaintiffs and appellees, *vs.* HARRY LYONS CONSTRUCTION, INC., ET AL., defendants and appellants.

1. EMPLOYER AND EMPLOYEE; CONTRACT OF SERVICE WITHOUT FIXED DURATION; RIGHT TO CANCEL UPON GIVING ONE-MONTH NOTICE.—In a mercantile contract of service in which no special time is fixed, any one of the parties may cancel said contract upon the giving of a one-month notice, called a *mesada*, to the other party, under article 302 of the Code of Commerce. The law gives an added proviso that in the case of factors or shop clerks, these shall be entitled to salary during this one month of standing notice. In any case, the one-month notice must be given to any employee, whether factor, shop clerk or otherwise, so long as the two conditions concur, namely, that no special time is fixed in the contract of service, and that said employee is a commercial employee. And when such notice is not given under these conditions, not only the factor or shop clerk but any employee discharged without cause, is entitled to indemnity which may be one month's salary.
2. ID.; ID.; MANNER OF PAYMENT OF SALARY DOES NOT DETERMINE SPECIAL TIME OF EMPLOYMENT.—The computation of payment, whether monthly or daily, does not represent nor determine a special time of employment. A commercial employee may be employed for one year and yet receive his salary on the daily or monthly or other basis.
3. ID.; ID.; USE OF WORD "TEMPORARY" IN CONTRACT OF SERVICE DOES NOT MEAN PERIOD OF EMPLOYMENT UNDER ARTICLE 302, CODE OF COMMERCE.—The word "temporary" as used in the contract of employment does not mean the special time fixed in the contracts referred to in article 302 of the Code of Commerce.
4. ID.; ID.; WAIVER OF EMPLOYEES OF BENEFITS UNDER ARTICLE 302, CODE OF COMMERCE MADE IN ADVANCE IS AGAINST PUBLIC POLICY.—Employees' waiver of the benefits given them by article 302 of the Code of Commerce, made in advance, is void as being contrary to public policy.
5. ID.; ID.; ID.; ARTICLE 302 MUST BE APPLIED IN CONSONANCE WITH CONSTITUTION.—Article 302 of the Code of Commerce must be applied in consonance with the provisions of our Constitution. In the matter of employment bargaining, there is no doubt that the employer stands on higher footing than the employee. First of all, there is greater supply than demand for labor. Secondly, the need for employment by labor comes from vital and even desperate, necessity. Consequently, the law must protect labor, at least, to the extent of raising him to equal footing in bargaining relations with capital and to shield him from abuses brought about by the necessity for survival. It is safe to presume therefore, than an employee or laborer who waives in advance any benefit granted him by law does so, certainly not in his interest or through generosity but under the forceful intimidation of urgent need, and hence, he could not have so acted freely and voluntarily.

APPEAL from a judgment of the Court of First Instance of Manila. Sanchez, J.

The facts are stated in the opinion of the court.

Gibbs, Gibbs, Chuidian & Quasha for appellant Harry Lyons Construction, Inc.

Cecilio I. Lim and *Antonio M. Castro* for appellees.

MORAN, *C. J.:*

This case originated in the Municipal Court of Manila upon a complaint filed on March 9, 1948, by the herein appellees as plaintiffs, against the herein appellants as defendants, for the sum of ₱2,210 plus interest, which plaintiffs claimed as one month advance pay due them. On April 28, 1948, the parties entered into a stipulation of facts upon which said municipal court rendered judgment for the plaintiffs. Upon denial of their motion for reconsideration of this judgment, the defendants filed an appeal to the Court of First Instance of Manila, wherein the parties submitted the case upon the same facts agreed upon in the Municipal Court. On October 2, 1948, the Court of First Instance of Manila rendered its decision holding for plaintiffs, as follows:

"Wherefore, judgment is hereby rendered—

"1. Ordering defendant Material Distributors, Inc. to pay plaintiff Enrique Ramirez the sum of ₱360 and plaintiff Juan Ramirez the sum of ₱250 with legal interest on each of the said sums from the date of the filing of the complaint in the Municipal Court of Manila until the date of full payment thereof; and

"2. Ordering defendant Harry Lyons Construction, Inc. to pay plaintiff Daniel Sanchez the sum of ₱250, and plaintiff Mariano Javier, Venancio Diaz, Esteban Bautista, Faustino Aquillo, Godofredo Diamante, Marcial Lazaro, Ambrosio de la Cruz and Marcelino Maceda the sum of ₱150 each, with legal interest on each of the said sums from the date of the filing of the complaint in the Municipal Court of Manila until the date of full payment thereof.

"One-half of the costs is to be paid by Material Distributors, Inc. and the other half by Harry Lyons Construction, Inc."

From this judgment, defendants filed an appeal with this court purely upon a question of law. The stipulation of facts entered into by the parties on April 28, 1948, is as follows:

"STIPULATION OF FACTS

"Come now the plaintiffs and the defendants, by their respective undersigned attorneys and to this Honorable Court, respectfully submit the following stipulation of facts:

"1. That the plaintiffs were respectively employed as follows:

EMPLOYED BY DEFENDANT MATERIAL DISTRIBUTORS, INC.

Name	Date of employment	Position	Salary
Enrique Ramirez	12|16|46	Warehouseman	₱450 a mo.
Juan Ramirez	do	do	250 a mo.

NOTE.—The salary of Enrique Ramirez was later reduced to ₱360 per month. This was the amount he was receiving at the time of his dismissal.

EMPLOYED BY DEFENDANT HARRY LYONS CONSTRUCTION, INC.

Daniel Sanchez	1|1|47	Carpenter-Foreman	₱250 a mo.
Mariano Javier	do	Guard	5 a day
Venancio Diaz	do	do	5 a day
Esteban Bautista	do	do	5 a day
Faustino Aquillo	do	do	5 a day
Godofredo Diamante	do	do	5 a day
Marcial Lazaro	do	do	5 a day
Ambrosio de la Cruz	do	do	5 a day
Marcelino Maceda	do	do	5 a day

as per contracts of employment, copies of which are attached to defendants' answer marked Exhibits 1 to 11 inclusive.

"2. That in said contracts of employment the plaintiff agreed as follows:

" 'I accept the foregoing appointment, and in consideration thereof, I hereby agree that such employment may be terminated at any time, without previous notice, and I further agree that salary and wages, shall be computed and paid at the rate specified up to the date of such termination.

" 'Also in consideration of such employment I hereby expressly waive the benefit of article 302 of the Code of Commerce and that of any other law, ruling, or custom which might require notice of discharge or payment of salary or wages after date of the termination of such employment.'

"3. That the plaintiffs were dismissed by the defendants on December 31, 1947 without one months' previous notice.

"4. That each of the plaintiffs demanded payment of one month's salary from the defendants and that the latter refused to pay the same.

"WHEREFORE, it is respectfully prayed that judgment on the foregoing stipulation of facts be rendered by this Honorable Court."

The points in issue herein are: first, whether plaintiffs, both those paid on a monthly and daily basis, are entitled to the benefit granted in article 302 of the Code of Commerce; and secondly, if they are so entitled, was their waiver of such benefits legal and valid?

Article 302 of the Code of Commerce reads as follows:

"ART. 302. In cases in which no special time is fixed in the contracts of service, any one of the parties thereto may cancel it, advising the other party thereof one month in advance.

"The factor or shop clerk shall be entitled, in such case, to the salary due for said month."

It is a clear doctrine, as gleaned from the provision of the law and settled jurisprudence,[1] that in a mercantile contract of service in which no special time is fixed, any one of the parties may cancel said contract upon the giving of a one-month notice, called a *mesada,* to the other party. The law gives an added proviso that in the case of factors or shop clerks, these shall be entitled to salary during this one month of standing notice. In any case, the one-month notice must be given to any employee, whether factor, shop clerk or otherwise, so long as the two conditions concur, namely, that no special time is fixed in the contract of service, and that said employee is a commercial employee. And when such notice is not given under these conditions, not only the factor or shop clerk but any employee discharged without cause, is entitled to indemnity which may be one month's salary.[2]

In the instant case, there lies no doubt that plaintiffs are commercial employees of appellant corporations, rendering

[1] Collete *vs.* France & Collete, Inc., G. R. No. 23927, November 5, 1925; Lopez *vs.* Roces, et al. (S. C.), G. R. No. 47950, July 1, 1942, 1 Off. Gaz., 672.

[2] Lopez *vs.* Roces et al., *see* footnote 1.

service as warehousemen, carpenter-foreman and guards. There is likewise no doubt as can be seen from the contracts of employment submitted as exhibits, that no special time has been fixed in the contracts of services between plaintiffs-appellees and defendants-appellants. The stated computation or manner of payment, whether monthly or daily, does not represent nor determine a special time of employment. Thus, a commercial employee may be employed for one year and yet receive his salary on the daily or weekly or monthly or other basis.

Appellants allege that the use of the word "temporary" in the contracts of services of some of the plaintiffs shows that their employment was with a term, and the term was "temporary, on a day to day basis." The record discloses that this conclusion is unwarranted. The contracts simply say—"You are hereby employed as temporary guard with a compensation at the rate of ₱5 a day * * *." The word "temporary" as used herein does not mean the special time fixed in the contracts referred to in article 302 of the Code of Commerce. The daily basis therein stipulated is for the computation of pay, and is not necessarily the period of employment. Hence, this Court holds that plaintiffs-appellants come within the purview of article 302 of the Code of Commerce.

Now, as to the second question, namely, the validity of plaintiffs' waiver of the benefits given them by said article 302. This court holds that such a waiver, made in advance, is void as being contrary to public policy. Granting that the "mesada" given in article 302 of the Code of Commerce, is for the bilateral benefit of both employer and employee, nevertheless, this does not preclude the finding that a waiver of such "mesada" in advance by the employee is contrary to public policy.

Public policy, with regard to labor, is clearly stated in article II, section 5, of the Philippine Constitution, which reads—

> "The promotion of social justice to insure the well-being and economic security of all the people should be the concern of the State."

and article XIV, section 6, which reads—

> "The State shall afford protection to labor, especially to working women and minors, and shall regulate the relations between landowner and tenant, and between labor and capital in industry and in agriculture. * * *"

Article 302 of the Code of Commerce must be applied in consonance with these provisions of our constitution. In the matter of employment bargaining, there is no doubt that the employer stands on higher footing than the employee. First of all, there is greater supply than demand for labor. Secondly, the need for employment by labor comes from vital and even desperate, necessity. Conse-

quently, the law must protect labor, at least, to the extent of raising him to equal footing in bargaining relations with capital and to shield him from abuses brought about by the necessity for survival. It is safe to presume therefore, that an employee or laborer who waives in advance any benefit granted him by law does so, certainly not in his interest or through generosity but under the forceful intimidation of urgent need, and hence, he could not have so acted freely and voluntarily.

For all the foregoing, this court hereby affirms the decision of the lower court, with costs against appellants.

Ozaeta, Parás, Feria, Pablo, Tuason, Bengzon, and *Reyes, JJ.,* concur.

Judgment affirmed.

[No. L-2268. October 20, 1950]

FEDERICO G. SANTIAGO, plaintiff and appellant, *vs.* BINALBAGAN ESTATE, INC., defendant and appellee

1. OBLIGATIONS AND CONTRACTS; DEBT MORATORIUM; WAIVER BY PARTIAL PAYMENT.—Where part of the obligation alleged to be covered by the debt moratorium is paid, the benefit of this provision is waived.
2. ID.; ID.; GRATUITY, WHEN A MONETARY OBLIGATION.—A gratuity becomes a monetary obligation on the date it is approved by the proper authorities.

APPEAL from a judgment of the Court of First Instance of Manila. Barrios, J.

The facts are stated in the opinion of the court.

Jose L. Blanco and *Federico G. Santiago* for appellant.
Marcial P. Lichauco and *Augusto Kalaw* for appellee.

PARÁS, *J.:*

The plaintiff entered the service of the defendant on October 20, 1940, first as stenographer and subsequently in various capacities until he resigned effective February 16, 1947, due to ill health. The highest monthly salary received by the plaintiff during the period of his employment was ₱250. Plaintiff's connection with the defendant was continuous, except when it was interrupted by the outbreak of the last war and the entry of the Japanese Army in Manila on January 2, 1942, when the defendant's Manila office was closed until the early part of February, 1942, and by the battle for the liberation of Manila when said office was closed from February 3, 1945, up to the early part of August, 1945.

While the plaintiff was thus employed, Resolution No. 31 of the board of directors of the defendant, approved on June 9, 1936, was in force. It provided that all permanent employees of the defendant, separated from the service on

or after July 1, 1938, for any reason other than inefficiency or misconduct, were entitled to retirement gratuity at the rate of one month's salary for each year of service, and the proportionate amount of any fraction thereof, said gratuity to be based on the highest basic rate of salary received.

The plaintiff duly applied for retirement under Resolution No. 31. In its Resolution No. 8, approved on February 5, 1947, the board of directors of the defendant approved the payment to the plaintiff of retirement gratuity from October 20, 1940, to December 31, 1941, based on the monthly salary of ₱150, the total amount received by the plaintiff, under protest, being ₱179.20. The plaintiff, in his communication of April 10, 1947, demanded from the defendant the payment of ₱1,401.23, representing unpaid balance of this gratuity for service rendered from October 20, 1940, to February 15, 1947, based on the highest basic rate of salary of ₱250 per month. On April 16, 1947, the board of directors of the defendant adopted Resolution No. 21, approving plaintiff's claim for retirement gratuity for his service from August 22, 1945, to February 15, 1947, and, in accordance with said resolution, the plaintiff received, under protest, the sum of ₱356.36, based on ₱200 per month as the highest basic rate of salary. This second payment included a difference due under the first payment which was computed only on ₱150 per month. On June 17, 1947, the plaintiff addressed a letter to the defendant, reiterating his right to retirement gratuity for the entire period of his service, including the period covered by the Japanese occupation. This demand was rejected by the defendant in its letter of June 21, 1947, on the ground that the defendant lost heavily during the war and had resolved to pay retirement gratuity to its employees only up to December 31, 1941.

The present action was instituted by the plaintiff in the Court of First Instance of Manila to recover from the defendant the sum of ₱1,044.18, representing unpaid retirement gratuity due and owing by the defendant to the plaintiff for services rendered from October 20, 1940, to February 15, 1947. The parties entered into a partial stipulation reciting substantially the facts above related. After they had waived their right to present additional evidence and submitted the case for decision on the pleadings, the trial court absolved the defendant from the complaint with respect to the gratuities already paid, and dismissed the case, without prejudice, with respect to gratuities corresponding to the period covered by the Japanese occupation, from which judgment the plaintiff interposed the instant appeal.

The defendant-appellee invokes the debt moratorium as regards the gratuity, if any, due for services rendered during the Japanese occupation, and the trial court appears

to have sustained the defendant's position. This is error, because the defendant had already chosen to pay the gratuity due from October 20, 1940, to December 31, 1941, which is also covered by the debt moratorium. Moreover, plaintiff's gratuity became a monetary obligation of the defendant only when its board of directors approved the retirement on February 5, 1947, or after Manila had been freed from enemy occupation and control, and is therefore not covered by the debt moratorium.

It is contended that the plaintiff cannot assail the finding of fact of the trial court that the plaintiff received gratuities corresponding to 1940 and 1941 and to the period from August 22, 1945, to February 15, 1947, because he has appealed to the Supreme Court purely on questions of law. This is erroneous. The payments already made to the plaintiff and the periods intended to be covered by said payments, are admitted by the plaintiff. He, however, has the right to contend, as a question of law, that the trial court erred in basing the computation of said payments on ₱200 per month, and not on ₱250 per month.

It is immaterial, contrary to intimations of the defendant, whether plaintiff's employment was continuous, because Resolution No. 31, upon which defendant's claim is founded, does not require continuous service in order that an employee may be entitled to retirement gratuity.

Defendant also argues that gratuity is not a right and may be withdrawn at any time by the defendant. Assuming that the defendant may at pleasure abolish its retirement system, the facts in this case do not reveal that the defendant has ever resolved to withdraw the benefits bestowed by Resolution No. 31. Indeed, defendant's contention is inconsistent with the circumstance that it paid to the plaintiff gratuity for the period subsequent to the Japanese occupation, namely, from August 22, 1945, to February 15, 1947. This payment is also inconsistent with the contention that the defendant had resolved to pay retirement gratuities only up to December 31, 1941.

As Resolution No. 31 plainly provides that the gratuity must be computed on the highest basic rate of salary, the gratuity to which the plaintiff is entitled for the entire period of his employment must be based on ₱250 per month. It is, however, argued that said monthly salary of ₱250 should not be taken as a basis, because it was paid in Japanese military notes which were of a much lower value than the Philippine currency. Resolution No. 31 makes no specification of the currency with which the retirement gratuity is to be paid. The distinction is therefore not important. Moreover, the monthly salary of ₱250 was given to the plaintiff beginning August 1, 1943, not because of the low purchasing power of the then Philippine peso but because the plaintiff was appointed secretary-treasurer of

the defendant, a position undoubtedly much higher than the other positions held by the plaintiff.

In view of the fact that Resolution No. 31 provides that the gratuity should be one month's salary for each year of service, and the proportionate amount of any fraction thereof, the plaintiff is entitled to collect gratuity only for the service actually rendered by him, that is, excluding the periods during which, according to the stipulation, the defendant was closed.

It being necessary to determine the exact period during which the plaintiff had rendered actual service to the defendant, and the corresponding amount still due him as gratuity for said period, which are matters of fact, the case has to be, as it is hereby, remanded to the lower court for further proceedings in conformity with this decision. So ordered, without costs.

Moran, C. J., Feria, Pablo, Bengzon, Tuason, and *Reyes, JJ.,* concur.

Case remanded to lower court for further proceedings.

[No. L-2575. October 23, 1950]

U. S. COMMERCIAL CO., plaintiff and appellee, *vs.* MACARIO GUEVARA ET AL., defendants. ALBERTO ZAMORA, appellant.

OBLIGATION AND CONTRACT; LIABILITY OF ORDINARY PARTNERSHIP IS NOT JOINT AND SEVERAL.—The obligation of the incorporators of a corporation whose charter is not registered but only acting as ordinary partnership under the joint responsibility of the original incorporators in the transaction of business, are not joint and several.

APPEAL from a judgment of the Court of First Instance of Davao. Fernandez, J.

The facts are stated in the opinion of the court.

Appellant in his own behalf.

FERIA, *J.:*

In an action instituted by the plaintiff against the defendants, the Court of First Instance of Davao denied the defendant's motion presented one month after the filing of this answer, to be allowed to file a third-party complaint against one Anastacio Pancho, and rendered judgment sentencing the defendants to pay jointly and severally to the plaintiff the amount stated in the judgment.

Of the four defendants only Alberto Zamora appealed from the lower court's judgment, and made the following assignments of error in his brief: (I) that the lower court erred in denying the motion for the admission of the third party complaint filed by the defendants against Anastacio Pancho, and (II) that the lower court erred in sentencing the defendants to pay jointly and solidarily their obligation to the plaintiff. The appellee did not file any brief or memorandum in this appeal.

1. Under sections 1 and 2, Rule 12, of the Rules of Court, whether a party to an action shall be allowed to implead an additional party or file a third-party complaint rests in the discretion of the court (Capayas *vs.* Court of First Instance of Albay, 43 Off. Gaz., 2071, 2074). In the present case, the defendants could have properly filed a third-party complaint against Anastacio Pancho, who entered into a contract with the defendants assuming the latter's obligation to the plaintiff, although said Pancho did not take part in the execution of the contract on which the plaintiff's claim is based, because a third-party complaint may also be based on a transaction other than that on which the plaintiff's action is based, provided it is connected with the plaintiff's claim (Capayas *vs.* Court of First Instance of Albay, *supra*). But in view of the fact, admitted or not denied by the defendants, that on April 15, 1946, the defendants rescinded said contract entered into by them with Anastacio Pancho because the latter has not complied with terms thereof, the lower court did not commit any error or abuse its discretion in denying the defendants' motion to file a third-party complaint against said Pancho.

II. The defendant-appellant's second assignment of error is well taken. Although in paragraph 5 of the complaint, first cause of action, it is alleged that the defendants "assumed jointly and severally not only the assets but also all obligations and liabilities incurred and contracted for and in the name of the said Fil-American Company," the defendants in their answer denied the fact alleged in said paragraph 4; and in the agreed statement of facts (p. 48, Record on Appeal) invited the attention of the lower court to the allegation or admission of the plaintiff in paragraph 3 first cause of action of the complaint, that the above named defendants acting as Board of Directors of said Fil-American Company unanimously approved on March 26, 1946, the following resolution:

"Resolved that the Fil-American Company, the articles of incorporation of which are as yet not registered in the Bureau of Commerce and Industry (should read securities and Exchange Commission), and as such the said company is and has heretofore been acting only as an ordinary partnership under the joint responsibility of the original incorporators, namely, J. V. Vincent, Macario Guevara, Trilby Guevara, Alberto Zamora, Esteban Ceballos, Servando Quidato and Harry Powers (absent in the U. S.) and Esteban Ceballos (deceased) were eliminated as such partners for having failed to comply in whole or part of their obligations to the company, be dissolved as it is hereby dissolved * * *."

As the defendants have been acting as an ordinary partnership under the joint responsibility of the original incorporators of the Fil-American Company, they are not jointly and severally liable to the plaintiff (art. 1698, Civil Code).

Wherefore, the lower court's judgment is reversed in so far as it sentences the appellant to pay, jointly and severally

with the other defendants, to the plaintiff the sum of ₱1,192.31 with interest of 6 per cent from the filing of the complaint, plus the sum of ₱119.23 as attorneys' fees and costs, and the appellant is sentenced to pay jointly or a *pro-rata* the said amounts to the plaintiff, with costs against the plaintiff-appellee. So ordered.

Moran, C. J., Parás, Pablo, Bengzon, Tuason, Montemayor, and *Reyes, JJ.,* concur.

Judgment partly reversed.

[No. L-2608. October 23, 1950]

ALFONSO RILI and TRINIDAD VDA. DE MIRAFLORES, plaintiffs and appellees, *vs.* CIRIACO CHUNACO ET AL., defendants and appellants.

1. APPEAL; SECOND MOTION TO SET ASIDE WHICH IS REITERATION OF THE FIRST DOES NOT SUSPEND PERIOD TO APPEAL.—A second motion to set aside which is a reiteration of the first does not have the effect of staying the period to appeal.
2. JUDGMENT; PETITION FOR RELIEF UNDER RULE 38; GROUNDS EXISTING AT THE TIME MOTION TO SET ASIDE WAS FILED CAN NOT BE RAISED IN PETITION FOR RELIEF.—The grounds existing and available at the time a motion to set aside a judgment was filed, cannot be raised in a petition for relief under Rule 38, because under Rule 26, section 8, a motion attacking a pleading or proceeding shall include all objections then available, and all objections not so included shall be deemed waived.

APPEAL from a judgment and orders of the Court of First Instance of Camarines Sur. Palacio, J.

The facts are stated in the opinion of the court.

Reyes & Dy-Liaco and *Manuel O. Chan* for appellant Chunaco.

Felipe, Karingal & Felipe and *Amelito R. Mutuc* for appellees.

MORAN, *C. J.:*

This is an appeal taken by the defendant Ciriaco Chunaco from a judgment rendered against him upon the pleadings.

The original complaint filed in this case was duly answered with specific denial. An amended complaint was later filed on September 18, 1943, to which no answer was made. A second amended complaint was filed dated August, 1944, which was answered on August 30, 1944. This answer, which according to the defendant himself, was intended as an answer to the second amended complaint, contained a mere general denial. On motion of the plaintiffs, upon the ground that the answer raised no issue of fact, a judgment was rendered on the pleadings against the defendants.

Defendant-appellant Ciriaco Chunaco was notified of the judgment on April 6, 1948. On April 20, 1948, or fourteen days after notice of judgment, a motion to set

aside was filed which was denied and notice of denial was served upon the defendant on April 24, 1948. A second motion to set aside was filed on May 27, 1948, which was denied, and notice of the denial was served on the defendant on June 17, 1948. The notice and record of appeal together with the appeal bond were filed on June 18, 1948. They were thus filed out of time.

The period of thirty days within which an appeal may be taken, begun on April 6, 1948, when defendant was notified of the judgment. After fourteen days of that period had passed, the first motion to set aside was filed on April 20, 1948. The period of appeal started to run again on May 24, 1948, when defendant was notified of the order denying his motion to set aside. His second motion to set aside was but a reiteration of the first and could not have the effect of staying again the period to appeal. The notice and record of appeal as well as the appeal bond were filed on June 18, 1948, or twenty-five days after defendant was notified of the denial of his first motion to set aside, and thirty-nine days after notice of judgment.

A motion for execution of judgment was filed, but defendant in his turn filed a motion for relief under Rule 38 upon the ground of mistake and fraud. The mistake alleged is one of law, and the fraud is alleged to consist of facts affecting the merits of the case. Furthermore, these grounds were existing and available at the time the first motion to set aside was filed. "A motion attacking a pleading or a proceeding shall include all objections then available, and all objections not so included shall be deemed waived" (Rule 26, section 8). The motion for execution was therefore rightly granted and the motion for relief under Rule 38 was rightly denied.

The judgment and orders appealed from are affirmed, the costs to be paid by appellant.

Parás, Feria, Pablo, Bengzon, Tuason, Montemayor, and *Reyes, JJ.,* concur.

Judgment and orders affirmed.

[No. L–2712. October 25, 1950]

SATURNINO ESCOVAL ET AL., plaintiffs and appellees, *vs.* LORENZA ESCOVAL ET AL., defendants and appellants

1. PARENT AND CHILD; NATURAL CHILDREN; WHAT CONSTITUTES SUFFICIENT PROOF OF THE UNINTERRUPTED POSSESSION OF THE STATUS OF NATURAL CHILDREN.—It is maintained that the conduct of the father in supporting his children, caring for them and living together with them is not sufficient recognition of their status as natural children if at the same time he never presented them to his brothers and sisters and to his other relatives. There is, however, no finding by the trial court of

such negative fact which may or may not be justifiable depending on whether the father and his relatives were or were not in good terms. There being no data on this matter, the conduct of the father in treating his children continuously as such in his own house, spontaneously and without concealment, though without publicity, is sufficient proof of the uninterrupted possession of the status of natural children as contemplated in article 135, paragraph 2 of the old Civil Code.

2. EVIDENCE; ARTICLE 135, PARAGRAPH 1, OLD CIVIL CODE; BIRTH CERTIFICATE AS AN INDUBITABLE WRITING.—The birth certificate of L.E. duly signed by the deceased F.E. wherein his paternity is expressly recognized by him constitutes an indubitable writing as contemplated in article 135, paragraph 1 of the old Civil Code.

3. CIVIL PROCEDURE; ACTION TO COMPEL RECOGNITION OF NATURAL CHILDREN MAY BE JOINED WITH ACTION BY SUCH NATURAL CHILDREN TO RECOVER PROPERTY AS HEIRS; RULE 2, SECTION 5, RULES OF COURT.—The action to compel recognition of natural children and the action by such natural children to recover property inherited by them may be joined in one complaint against the same defendants under Rule 2, section 5 of the Rules of Court. Rulings in Briz. *vs.* Briz. (43 Phil., 763) and Suarez *vs.* Suarez (43 Phil., 903), reiterated.

APPEAL from a judgment of the Court of First Instance of Tarlac. Jose, J.

The facts are stated in the opinion of the court.

Union C. Kayanan for appellants.
Rufino E. Gonzales for appellees.

MORAN, *C. J.:*

This is an appeal from a decision of the Court of First Instance of Tarlac wherein defendants Francisco, Lorenza and Delfin surnamed Escoval, are compelled to recognize plaintiffs Saturnino, Luz and Bienvenido surnamed Escoval as natural children of one Faustino Escoval, deceased, and in consequence cadastral lot No. 4012 of Paniqui, Tarlac, was ordered delivered to said plaintiffs.

The facts found by the lower court are as follows: On April 18, 1937, Faustino Escoval died unmarried, leaving a parcel of land designated as lot No. 4012 of the cadastral survey of Paniqui, Tarlac, covered by original certificate of title No. 13633 of said province. On February 23, 1946, Francisco Escoval, Lorenza Escoval and Delfin Escoval, brothers and sister of the deceased, executed a "deed of extrajudicial partition and absolute sale" wherein they partitioned said parcel of land among themselves and Lorenza Escoval, married to Juan Arellano, purchased the shares of her co-heirs Francisco and Delfin. On March 31, 1946, spouses Juan Arellano and Lorenza Escoval sold to Francisco Llabres the same parcel of land for the sum of ₱2,500 and transfer certificate of title No. 23351 was issued in favor of the purchaser.

It turned out, however, and it is also a fact found by the trial court that minor plaintiffs were begotten by Purificacion Arcilla with Faustino Escoval, both unmarried, and have been in continuous possession of the status of natural children of said Faustino Escoval as justified by the latter's conduct of supporting them, caring for them and living with them as his natural children; and that the birth certificate of Luz Escoval is an indubitable writing wherein Faustino Escoval's paternity is expressly recognized by him with his authentic signature.

The judgment appealed from is as follows:

"In view of the foregoing, judgment is rendered in favor of the plaintiffs against the defendants: first, compelling the defendants to recognize minor plaintiffs Saturnino Escoval, Luz Escoval and Bienvenido Escoval; second, the extrajudicial partition as well as all transfers of certificate of title No. 13633 are hereby annulled, restoring to its original force and effect said certificate of title No 13633; third, ordering Francisco Llabres to deliver the land in question to the plaintiffs; fourth, ordering defendants Lorenza Escoval, Francisco Escoval and Delfin Escoval to pay their co-defendant Francisco Llabres the amount of ₱1,000 with legal interests from March 6, 1946, and ₱1,500 with legal interests from March 31, 1946, until those amounts are fully paid; and fifth, sentencing said defendants Escovals to pay legal costs to the plaintiffs".

Only defendants Delfin and Lorenza surnamed Escoval appealed and the only issue in their appeal is whether or not, under the facts found by the trial court, plaintiffs may be declared as acknowledged natural children of the deceased Faustino Escoval, and whether or not the defendants surnamed Escoval may be compelled to make the acknowledgment.

The judgment appealed from is predicated upon article 135 of the Civil Code which reads:

"ART. 135. The father may be compelled to acknowledge his natural child in the following cases:

1. When an indubitable writing of his exists in which he expressly acknowledge his paternity.

2. When the child is in the uninterrupted possession of the status of a natural child of the defendant father, justified by the conduct of the father himself or that of his family."

* * * * * * *

It is maintained that the conduct of the father in supporting his children, caring for them and living together with them is not sufficient recognition of their status as natural children if at the same time he never presented them to his brothers and sisters and to his other relatives. There is, however, no finding by the trial court of such negative fact which may or may not be justifiable depending on whether the father and his relatives were or were not in good terms. There being no data on this matter, the conduct of the father in treating his children continuously as such in his own house, spontaneously and

without concealment, though without publicity, is sufficient proof of the uninterrupted possession of the status of natural children as referred to in the above provision. And there is further the birth certificate of Luz Escoval duly signed by the deceased Faustino Escoval wherein his paternity is expressly recognized by him. The authenticity of Faustino Escoval's signature in that certificate is admitted by the appellants in their brief.

Appellants seem to hold the theory that to compel acknowledgment of natural children, the action may be brought only against the father because "only the father is obliged to acknowledge said natural child". But article 137 of the Civil Code authorizes action after the death of the parents if they die during the minority of the children, and here plaintiffs are still minors.

Furthermore, the action to compel recognition of natural children and the action by such natural children to recover property inherited by them may be joined in one complaint against the same defendants under Rule 2, section 5 of the Rules of Court as well as under the former rulings of this Court in Briz *vs.* Briz (43 Phil., 763); and Suarez *vs.* Suarez (43 Phil., 903). In the first case we held:

"The question whether a person in the position of the present plaintiff can in any event maintain a complex action to compel recognition as a natural child and at the same time to obtain ulterior relief in the character of heir, is one which in the opinion of this court must be answered in the affirmative, provided always that the conditions justifying the joinder of the two distinct causes of action are present in the particular case. In other words, there is no absolute necessity requiring that the action to compel acknowledgment should have been instituted and prosecuted to a successful conclusion prior to the action in which that same plaintiff seeks additional relief in the character of heir. * * *"

All the legitimate heirs who may be affected by the action for recognition are made defendants in the instant case. And there being sufficient proof that minor plaintiffs have been in an uninterrupted possession of the status of natural children of the deceased Faustino Escoval defendants-appellants were rightly compelled by the trial court to make the acknowledgment and the natural children thus acknowledged were rightly declared to be the owners of lot No. 4012 to the exclusion of defendants who are merely brothers and sister of the deceased. Therefore, the partition by defendants amongst themselves, the sale to Lorenza Escoval by her alleged co-heirs, and the conveyance to Faustino Llabres are all null and void.

For all the foregoing, the judgment of the lower court is hereby affirmed, the costs of this Court to be paid by appellants Delfin Escoval and Lorenza Escoval.

Parás, Feria, Pablo, Bengzon, Tuason, Montemayor, and *Reyes, JJ.,* concur.

Judgment affirmed.

[No. L-2024. October 27, 1950]

In the matter of the intestacy of Felix de Leon, deceased. ASUNCION SORIANO, petitioner and appellee, *vs.* JOSE P. DE LEON and CECILIO P. DE LEON, as Joint Administrators of the estate of Felix de Leon, oppositors and appellants.

LAND REGISTRATION; ANNOTATION OF LIEN; ORDER TO ANNOTATE IN INTESTATE PROCEEDINGS; CASE AT BAR.—When the parties in an intestate proceeding entered into an agreement covering the intestate estate including all lands located in San Miguel, Bulacan, which was submitted by them to and approved by the Court of First Instance of Manila, the order issued by the latter court directing the Register of Deeds of Bulacan to annotate the lien created by the agreement was merely incidental to said agreement. It would be different if a petition to annotate was filed independently of the intestate proceeding. The mere fact that said agreement could have been filed with said register of deeds under sections 71 and 72 of Act No. 496, is not a valid reason for objecting to the order to annotate.

APPEAL from an order of the Court of First Instance of Manila. Ocampo, J.

The facts are stated in the opinion of the court.

Lorenzo Sumulong and *Jose P. Santos* for appellants.
Vicente J. Francisco for appellee.

PARÁS, *J.:*

Felix de Leon died in the City of Manila on November 23, 1940, leaving properties in Manila, Bulacan and Nueva Ecija. He was survived by his wife Asuncion Soriano and by his three acknowledged natural children Jose P. de Leon, Cecilio P. de Leon and Albina P. de Leon. Intestate proceedings were instituted in the Court of First Instance of Manila (Special Proceeding No. 58390). On March 23, 1943, an amicable agreement was executed between Asuncion Soriano on the one hand and the acknowledged natural children on the other, in which it is stipulated, among other things, that the three acknowledged natural children would deliver to Asuncion Soriano certain amounts of palay annually beginning the year 1943 and continuing during the lifetime of Asuncion Soriano. The agreement also provides that said obligation constitutes a first lien upon all the rice lands of the estate of Felix de Leon in San Miguel, Bulacan. The agreement was approved by the Court of First Instance of Manila on April 1, 1943.

On October 29, 1946, Asuncion Soriano filed a petition praying that the Register of Deeds of Bulacan be directed to annotate, as first lien, at the back of the certificates of title therein enumerated and covering all rice lands in San Miguel, Bulacan, belonging to the estate of Felix de Leon, the obligation to deliver palay above-mentioned. To this petition the three De Leon children filed an opposition

alleging that their failure to deliver in full the stipulated amounts of palay for the years 1944, 1945 and 1946 was due to force majeure and that, therefore, there was no cause for the registration of the lien in favor of Asuncion Soriano. On November 23, 1946, the Court of First Instance of Manila issued an order directing the Register of Deeds of Bulacan to annotate at the back of certificates of title Nos. 10420, 12134, 19156, 11319, 11816, 10345, 10265, 10699, 11946, 11473, 11658, 11090, 10654, 11634, 11903, 11805, 11806, 10111, 11705, 11989, 10440, 11862, 11597, 11826, 12052, 10109, 10150, 10146 and 10211, the obligation of the De Leon children to deliver palay in accordance with the agreement of March 23, 1943. On December 2, 1946, the latter filed a motion for reconsideration alleging that there was a pending suit in the Court of First Instance of Bulacan for specific performance filed by Asuncion Soriano and praying that action on the petition for annotation be suspended until said suit was finally decided. After answer by Asuncion Soriano, the Court of First Instance of Manila issued on February 19, 1947, an order denying the motion for reconsideration. On August 20, 1947, the joint administrators, Jose P. de Leon and Cecilio P. de Leon, filed a petition praying that the orders of November 23, 1946, and February 19, 1947, be set aside or at least modified by excluding therefrom the residential lands of Felix de Leon in San Miguel, Bulacan, covered by certificates of title Nos. 10420, 10699, 10654, 10440, 10150 and 10146, it being contended that the agreement of March 23, 1943, provides that the lien should refer only to all rice lands, and that the Court of First Instance of Manila had no jurisdiction to issue said orders because the petition to annotate should have been filed in the original case in which the decree of registration was entered. Asuncion Soriano filed an opposition, to which the joint administrators filed a reply. Asuncion Soriano filed a counter reply, followed by a rejoinder on the part of the joint administrators. On November 25, 1947, the Court of First Instance of Manila issued an order denying the petition of August 20, 1947, filed by the joint administrators. From this order the present appeal has been taken by the joint administrators.

It is argued for the appellants that the Court of First Instance of Manila had no jurisdiction to direct the Register of Deeds of Bulacan to annotate the lien in question, because, under section 112 of Act No. 496, all petitions and motions under the provisions of said Act after the original registration must be filed in the original case in which the decree of registration was entered and, under sections 71 and 72 of said Act, the proper procedure was merely to file and register the document creating the lien, or a certified copy thereof, in the office of the Register

of Deeds of Bulacan. The contention is without merit. The agreement of March 23, 1943, covering the estate of the deceased Felix de Leon including all lands located in San Miguel, Bulacan, was submitted by the parties to and approved by the Court of First Instance of Manila, and the order to annotate, directed to the Register of Deeds of Bulacan, was merely incidental to said agreement. It would be different if the petition to annotate was filed independently of the intestate proceedings. It is true that the appellee, without any judicial directive, could have filed and registered the agreement of March 23, 1943, with the Register of Deeds of Bulacan under sections 71 and 72 of Act 496, but this circumstance is not a valid reason for objecting to the order to annotate.

Appellants also allege that the appellee misrepresented the lands in San Miguel, Bulacan, as being all rice lands, when in fact some are residential. It is noteworthy that the petition filed by appellee on October 29, 1946, particularized the rice lands to be affected by her lien, with their corresponding certificates of title, and the appellants never contended either in their opposition or in their motion for reconsideration of the order of November 23, 1946, that some parcels are residential. In order that fraud may be a ground for annulling a final judgment, it must be extrinsic, which is not so in the case at bar. Hence, as no appeal was taken from the order of November 23, 1946, it had become final and cannot now be reopened so as to allow the appellants to prove that some of the parcels located in San Miguel, Bulacan, are residential.

Wherefore, the appealed order is affirmed and it is so ordered with costs against the appellants.

Moran, C. J., Feria, Pablo, Bengzon, Tuason, Montemayor, and *Reyes, JJ.,* concur.

Order affirmed.

[No. L–2342. October 27, 1950]

SILVERIO Q. CORNEJO, plaintiff and appellant, *vs.* MANUEL B. CALUPITAN, D. B. CASTAÑEDA and EUSTACIO BARRERA, defendants and appellees.

1. PURCHASE AND SALE; TERMS OF AGREEMENT CONCLUDED BY PARTIES BUT SUBSEQUENTLY MODIFIED BY VENDEE; COUNTER-PROPOSITION BY VENDOR TO HAVE BALANCE IN GENUINE PHILIPPINE CURRENCY.—M. C. wanted to sell a parcel of land belonging to him which S. C., on January 4, 1945, offered to buy for the sum of ₱650,000 in Japanese Military Notes, with an earnest money of ₱70,000, the balance payable within 15 days from date of offer, which was accepted by M. C. the vendor. S. C. the vendee, on January 6, 1945, however, delivered only ₱65,000 in Japanese war notes as the earnest money and informed the vendor that the balance of ₱585,000 was to be made on January 25, 1945. The vendor, also in writing, accepted the

aforesaid partial payment but on condition that the said balance be paid in genuine Philippine currency. On January 22, 1945, after supposedly failing to deliver the balance of ₱585,000 in Japanese war notes to M. C. because the latter could not be found, S. C. deposited said balance in court and on the same day filed an action for specific performance and payment of damages against M. C. *Held*, That the original agreement between the parties had been abandoned and rendered void by the vendee himself and that as to the new proposition made by the latter, there was no meeting of the minds of the parties for it was not accepted entirely by the vendor. Consequently, the contract of sale of the land in question was not perfected and so the vendor M. C. may not now be compelled to convey said land to the appellant S. C. As warranted by the facts and circumstances prevailing when the vendor made the counter-proposition, the latter wanted, intended and made it clear that the balance of the purchase price of ₱585,000 be paid in genuine Philippine currency, not in Japanese war notes.

2. PAYMENTS; JAPANESE WAR NOTES; BALLANTYNE SCHEDULE APPLIED.—The value of ₱65,000 Japanese war notes as of January 6, 1945, in the City of Manila, according to the Ballantyne schedule is fixed at ₱541.66 genuine Philippine currency.

APPEAL from a judgment of the Court of First Instance of Manila. De Leon, J.

The facts are stated in the opinion of the court.

Francisco M. Africa and *Jose L. Africa* for appellant.
Mariano A. Albert for appellee.

MONTEMAYOR, *J.:*

This is an appeal prosecuted by the plaintiff Silverio Q. Cornejo directly from the judgment of the Court of First Instance of Manila, absolving the defendants from the complaint for specific performance, seeking to compel Manuel B. Calupitan to convey his land containing about 110 hectares situated in the Province of Tayabas (now Quezon) in favor of plaintiff-appellant.

By a direct appeal from the Court of First Instance, only questions of law may be raised here, and counsel for appellant so states and intimates in his brief where on page one thereof, he says:

"This appeal is now brought to this Honorable Tribunal that it may finally resolve certain *questions of law* involved herein."

Under the circumstances, we may therefore rely on the findings of fact made by the trial court. Said facts necessary for the determination of the appeal may be briefly stated as follows.

In January, 1945, defendant Manuel B. Calupitan who owned a parcel of land in the barrio of Mayabobo, Candelaria, Tayabas with an area of 110.9125 hectares, authorized his co-defendants D. B. Castañeda and Eustacio Barrera, real estate brokers operating in Manila, to sell the aforementioned parcel. The defendant brokers contacted their friends and clients and finally received an offer in

writing (Exhibit B, Annex 2) from plaintiff Silverio Q. Cornejo, which reads thus:

"CASTAÑEDA–BARRERA REALTY CO.
"R. 317 Kneedler Bldg.
"Manila.

"The undersigned respectfully offers to buy the 110.9125 hectares in barrio Mayabobo, Candelaria, Tayabas of Dr. Manuel Calupitan for the total amount of Six hundred fifty thousand (₱650,000) pesos with an earnest money of Seventy thousand (₱70,000) pesos; the balance payable within fifteen (15) days from date hereof; with the condition that all the papers evidencing ownership are in order.

"Manila, Philippines, this 4th day of Jan. 1945.

(Sgd.) "S. Q. CORNEJO

"Accepted by:

Sgd.) "MANUEL B. CALUPITAN"

It will be noted that on the same day that the offer was made, January 4, 1945, defendant Calupitan accepted it by signing his name at the foot thereof under the phrase "accepted by". The parties are agreed that the price of ₱650,000, including the earnest money of ₱70,000 was payable in Japanese military notes. Cornejo, however, because he did not have the cash to pay the ₱70,000 earnest money and to complete the payment within the period specified in his offer as accepted by Calupitan, delivered only ₱65,000 Japanese war notes to defendant brokers Castañeda & Barrera on January 6, 1945, with instructions to deliver the same to Calupitan on the same date and to inform the latter that the balance of ₱585,000 was to be made on January 25, 1945. This transaction or proposition was reduced to writing in the form of a receipt, and is now Exhibit C. A carbon copy of the said exhibit was given to Calupitan by the brokers on the same date, January 6, 1945, presumably for his approval and acceptance, together with the ₱65,000 earnest money in Japanese military notes. Calupitan, however, instead of merely affixing his signature at the foot thereof to show his conformity, as he had formerly done with the original offer, Exhibit B, wrote out a receipt for the ₱65,000 earnest money in military notes delivered to him by Castañeda & Barrera, specifying his own terms as to the payment of the balance, so that the carbon copy of Exhibit C and said receipt written out by Calupitan at the bottom thereof, now marked Exhibit M, Annex 3 reads as follows:

"CASTAÑEDA–BARRERA REALTY CO., LTD.
"317 Kneedler Building, Manila
"Telephone 2–48–88

"Received from Atty. Silverio Q. Cornejo the sum of Sixty-five thousand (₱65,000) pesos to be delivered to Dr. Manuel Calupitan (owner) as partial payment of the 110.9095 hectares, more or less, in the barrio of Mayabobo, Candelaria, Tayabas, Philippines and covered by T. C. T. No. 3366.

"The balance of Five hundred eighty-five thousand (₱585,000) pesos to be paid in accordance with the written offer of Atty. Cornejo and accepted by Dr. Manuel Calupitan, on or before January 25, 1945.

"Manila, Philippines, this 6th day of January, 1945.

"CASTAÑEDA–BARRERA REALTY CO.

By: "D. B. CASTAÑEDA

"Received from Atty. Silverio Q. Cornejo through Atty. D. B. Castañeda of the Castañeda–Barrera Realty Co., Ltd. the sum of Sixty-five thousand pesos (₱65,000) J. N. only as earnest money and/or partial payment of my one hundred ten hectares, ninety centares and 95 ares (110.9095 hectares) more or less in barrio Mayabobo, municipality of Candelaria, Province of Tayabas, Philippines, as described in the Escritura de Venta dated Dec. 28, 1937, made by Maria Pardel in favor of Manuel B. Calupitan, Doc. No. 219, page No. 48, Libro No. VI, serie de 1937, of Notary Public Arturo Fanlo of Manila, and more particularly described in T. C. T. No. 3366 in the name of Jose Javier, as administrator of the Estate of Margarita Valenzuela deceased. The balance of Five hundred and eighty-five thousand pesos (₱585,000) Philippine currency, to be paid on or before January 25, 1945.

"Manila, Philippines, this 6th day of January, 1945.

(Sgd.) "MANUEL B. CALUPITAN"

The balance of ₱585,000 was never paid or delivered by Cornejo nor received by Calupitan. Cornejo claims that he had been looking in vain for Calupitan to deliver to him the said balance in Japanese military notes but that Calupitan had either avoided him, hidden himself or had left the City so as to prevent delivery of the money to him. Calupitan on the other hand, insists that he never avoided Cornejo nor purposely prevented delivery of the balance of the purchase price but that for security reasons he made it a point not to disclose his address because he was being sought by the Japanese military authorities for his guerrilla activities. The fact is that on January 22, 1945, after supposedly failing to deliver the balance of ₱585,000 in Japanese war notes to Calupitan, Cornejo deposited the sum with the Clerk of Court, securing the corresponding receipt therefor, Exhibit H, and then on the same day Cornejo filed the corresponding complaint in court against Calupitan and the two real estate brokers for specific performance and for payment of damages.

The trial court through Judge Dionisio de Leon in absolving the defendant-appellee from the complaint, held that appellant Cornejo repudiated the original agreement by proposing that the earnest money be reduced from ₱70,000 to ₱65,000 and that the period for payment of the balance of the purchase price be extended from the 19th to the 25th of January, 1945; that in that particular agreement or transaction, time was of the essence of the contract, and that in such a case, acceptance of option and payment of the purchase price constituted a condition precedent for specific performance; that this was particularly true during those days in January, 1945 when the Amer-

ican liberation forces were already at the outskirt of Manila and the people in the City were living from day to day in constant expectation of being liberated from the Japanese, and that those who ventured into business were greatly influenced in their decisions by the circumstances of the times and the fact that Japanese military notes, then used as legal tender, were depreciating in value by leaps and bounds. The trial court further held that the plaintiff himself rendered the original agreement null and void, and that in making his new proposition as to the payment of the earnest money and the period for the delivery of the balance of the purchase price, Calupitan could either accept or reject said new proposition or make a counter proposition which he did by imposing the condition that the said balance be paid in genuine Philippine currency on or before January 25, 1945, as proposed by Cornejo.

Did Calupitan really intend and make it clear that said balance be paid in genuine Philippine currency instead of Japanese military notes, and did Cornejo so understand it? This is really the crucial point on which the decision in the case mainly hinges. Counsel for appellant correctly boils down the controversy in the present appeal when he states in his brief:

"The critical point to be determined in this controversy particularly centers on the meaning to be given to the phrase 'Philippine currency' which was used by one of the parties. The interpretation of that phrase will ultimately decide all other questions subsidiary to this issue, and will eventually formulate the status which the parties assumed in this case. For if it can be interpreted to mean what the defendant and the lower court contended to be the 'genuine' Philippine currency, then the stand taken by the plaintiff cannot be maintained; but if it should be held to be the currency prevailing during the period when the contract was made and when it was enforceable, then the decision cannot but be favorable to the plaintiff. For then the plaintiff will have complied with his end of the bargain and the contract deemed enforced in accordance with its terms."

As we stated at the beginning of this decision, we have to rely upon the findings of fact of the trial court, for only questions of law may be raised in this appellate tribunal. The trial court found and held that Calupitan wanted, intended and made it clear that the balance of the purchase price of ₱585,000 be paid in genuine Philippine currency, not in Japanese war notes. This finding is based not only on what appears on Exhibit M, particularly the note or receipt written out in longhand and signed by Calupitan, but also on the oral evidence submitted, consisting of several hundred pages of transcript. If the appellant was dissatisfied by the findings of the trial court and wanted the oral evidence received, he should have appealed to the Court of Appeals. Instead, he came direct to this court and made it of record that he was raising only questions of law.

After a careful study of the record, particularly Exhibit M, we agree with the trial court that in varying and modifying the terms of the original agreement, Exhibit B, offered by Cornejo and accepted by Calupitan, that the earnest money was to be ₱70,000 and the balance was to be paid fifteen days after January 4, 1945, which modification consisted in reducing the earnest money from ₱70,000 to ₱65,000 and in extending the period of payment of the balance from January 19th to January 25th, Cornejo abandoned and rendered void the said original agreement. His new proposition, a modification of the old one, was subject to acceptance or rejection by Calupitan who, as already stated, may make a counter proposition which he did, and unless accepted and complied with by Cornejo, then the deal between the two parties was off.

We are also convinced that Calupitan wanted to have the balance paid in genuine Philippine currency. This is established not only by his extended testimony during the hearing as found by the trial court but also by the very terms of Exhibit M, particularly the portion written out in longhand by Calupitan. It will be noticed that in referring to the earnest money of ₱65,000 which he received, he added the two letters "J. N.", meaning Japanese notes. On the other hand, in describing the balance of ₱585,000, he denominates it "Philippine currency". Moreover, as found by the trial court, during the latter part of January, 1945, when Manila where the parties were then living was on the eve of being assaulted and liberated by the American liberation forces, the Japanese military notes were fast losing their purchasing power not only by the week but by the day if not by the hour. According to the trial court's findings, Calupitan said at the beginning when he accepted the original offer of Cornejo to pay the balance in Japanese military notes, he intended to re-invest the sales price in urban property. However, when the terms of the original agreement were varied and the balance was not to be paid as early as was originally agreed upon and realizing that investment of said balance would be hazardous, difficult, if not impossible because of the approaching battle of Manila, he changed his mind and wanted said balance to be paid in genuine Philippine currency although he accepted the earnest money of ₱65,000 in Japanese military notes. This, he said, he made plain to the brokers who delivered to him said earnest money.

According to the very testimony of Cornejo quoted by the trial court in its decision, Cornejo himself had his doubts about the payment of the balance of ₱585,000 in Japanese military notes as he now claims. In fact, he was rather intrigued or worried about the phrase "Philippine currency" written by Calupitan on Exhibit M, and that was the reason why he made so much effort to see Calupitan to put his mind at ease on that point. This,

of course, greatly weakens the stand now taken by the appellant that the understanding between himself and Calupitan as to the payment of the balance of the purchase price, even under Calupitan's counter proposition (Philippine currency) was to be made in Japanese military notes.

It is urged on the part of the appellant that the balance of the purchase price of ₱585,000 in genuine Philippine currency is out of all proportion to the real value of the land in question whose assessed value is only about ₱5,000. This may be true but as the trial court well said, the owner of a parcel of land could quote his own price, reasonable or unreasonable. It is up to the prospective purchaser to accept or reject it. It might even be possible that Calupitan had changed his mind not to part with his land and so he imposed a condition hard to fulfill and named a price quite unreasonable, but he was well within his rights as owner of the land because the original agreement had already been abandoned and rendered void.

But Calupitan had received the ₱65,000 earnest money in Japanese war notes. He should not be allowed to enrich himself at the expense of the plaintiff. He should return the value of said sum at the time, to the plaintiff.

In view of the foregoing, we find that the original agreement, Exhibit B, between Cornejo and Calupitan had been abandoned and rendered void by Cornejo himself, and that as to the new proposition made by Cornejo, there was no meeting of the minds of the parties for it was not accepted entirely by Calupitan. Consequently, the contract of sale of the land in question was not perfected and so Calupitan may not now be compelled to convey said land to plaintiff-appellant. However, Calupitan is ordered to return to the plaintiff the value of the ₱65,000 Japanese war notes he received, which value is to be ascertained according to the Ballantyne schedule as of January 6, 1945, in Manila. Said value is hereby fixed at ₱541.66, with legal interest from January 6, 1945, until paid.

With this modification, the decision appealed from is hereby affirmed. No pronouncement as to costs.

Moran, C. J., Pablo, Bengzon, Tuason, and *Reyes, JJ.,* concur.

Parás, J., concurs in the result.

FERIA, *J.,* dissenting and concurring:

In his direct appeal from the Court of First Instance of Manila to this court, only questions of law may be raised by the appellant and passed upon by this court, as admitted by the appellant in his brief and stated in the decision of the majority. The solution of the question of law raised in this appeal depends on the interpretation of the phrase "Philippine currency" used by the appellee

Calupitan in Exhibit M. And the conclusion of the trial court that it was the intention of Calupitan in using said phrase that the balance of the purchase price be paid in genuine Philippine currency, and not in Japanese war notes, in view of his testimony and other evidence in the record, is certainly a conclusion or finding of fact.

The decision of the majority correctly holds that "we have to rely upon the findings of the trial court, for only questions of law may be raised in this appellate tribunal." But, instead of accepting the above finding of the court below, regardless of whether it is supported by the evidence or not, and basing on it as a minor premise its conclusion of law in the question properly raised by the appellant, the majority examines the evidence and concludes that "We are also convinced that Calupitan wanted to have the balance paid in genuine Philippine currency," because "This is established not only by his extended testimony during the hearing as found by the trial court but also by the very terms of Exhibit M." In passing upon this finding of fact of the court *a quo*, the majority says:

"We are also convinced that Calupitan wanted to have the balance paid in genuine Philippine currency. This is established not only by his extended testimony during the hearing as found by the trial court but also by the very terms of Exhibit M, particularly the portion written out in longhand by Calupitan. It will be noticed that in referring to the earnest money of ₱65,000 which he received, he added the two letters 'J. N.', meaning Japanese notes. On the other hand, in describing the balance of ₱85,000, he denominates it 'Phil. currency'. Moreover, as found by the trial court, during the latter part of January, 1945, when Manila where the parties were then living was on the eve of being assaulted and liberated by the American liberation forces, the Japanese military notes were fast losing their purchasing power not only by the week but by the day if not by the hour. According to the trial court's findings, Calupitan said that at the beginning when he accepted the original offer of Cornejo to pay the balance in Japanese military notes, he intended to re-invest the sales price in urban property. However, when the terms of the original agreement were varied and the balance was not to be paid as early as was originally agreed upon, and realizing that investment of said balance would be hazardous, difficult, if not impossible because of the approaching battle of Manila, he changed his mind and wanted said balance to be paid in genuine Philippine currency although he accepted the earnest money of ₱65,000 in Japanese military notes. This, he said, he made plain to the brokers who delivered to him said earnest money.

"According to the very testimony of Cornejo quoted by the trial court in its decision, Cornejo himself had his doubts about the payment of the balance of ₱585,000 in Japanese military notes as he now claims. In fact, he was rather intrigued or worried about the phrase 'Philippine currency' written by Calupitan on Exhibit M, and that was the reason why he made so much effort to see Calupitan to put his mind at ease on that point. This, of course, greatly weakens the stand now taken by the appellant that the understanding between himself and Calupitan as to the payment of the balance of the purchase price, even under Calupitan's counter proposition (Philippine currency) was to be made in Japanese military notes."

In view of the foregoing, I am sorry to dissent from the decision of the majority, because this Supreme Court has no jurisdiction or power to pass upon the findings of fact of the Court of First Instance in appeals like the present, and the decision is *misleading*. I would have signed it without hesitation, had the above-quoted portion of the decision been omitted or stricken out.

The question of law raised by the appellant is whether or not the new offer made by him to buy the land on the condition that he has to pay an earnest money of ₱65,000 and the balance of ₱585,000 in Japanese war notes on or before January 25, 1945, was accepted by Calupitan, and therefore a new contract binding upon the parties was perfected as contended by the appellant.

In view of the conclusive finding of the lower court that, according to the evidence, the words or phrase "Philippine currency" used by the appellee Calupitan in his counter-proposition Exhibit M was intended to mean genuine Philippine currency, it is obvious that appellant's contention is without foundation, and the lower court did not commit any error in deciding that the new contract proposed by appellant Cornejo to appellee Calupitan was not perfected. Because there was no meeting of the minds of the parties, since Cornejo's proposition to pay the balance in Japanese war notes was not accepted by Calupitan, who made the counter-proposition that it be paid in genuine Philippine currency.

I therefore concur in the decision of the majority on this question of law and in the result.

Judgment modified.

[No. L-2508. October 27, 1950]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* MAMERTO ABNER ET AL., defendants. ROBERTO SOLER and DOMINGO ABELLA, bondsmen and appellants.

1. CRIMINAL LAW AND PROCEDURE; BAIL; METHODS OF TAKING BAIL.—Under section 1 of Rule 110 of the Rules of Court there are two methods of taking bail: (1) by bail bond and (2) by recognizance.
2. ID.; ID.; BAIL BOND AND RECOGNIZANCE, DISTINGUISHED.—A bail bond is an obligation given by the accused with one or more sureties, with the condition to be void upon the performance by the accused of such acts as he may legally be required to perform. A recognizance is an obligation of record, entered into before some court or magistrate duly authorized to take it, with the condition to do some particular act, the most usual condition in criminal cases being the appearance of the accused for trial. A recognizance is valid though not signed by the accused.
3. ID.; ID.; FORFEITURE; FAILURE OF BONDSMEN TO PRODUCE ACCUSED DUE LATTER'S VOLUNTARY CONCEALMENT.—Where the failure of the bondsmen to produce the accused in court was due to the campaign of the Government to capture him dead or alive

which led him to remain in hiding, brought about by the fact that he and his followers "have turned out brigands who threatened to disturb the peace and tranquility of the people," forfeiture of the bail bond or recognizance was sustained.

APPEAL from an order of the Court of First Instance of Camarines Sur. Surtida, J.

The facts are stated in the opinion of the court.

Reyes & Dy-Liacco for appellants.

First Assistant Solicitor General Roberto A. Gianzon and *Solicitor Luis R. Feria* for appellee.

PARÁS, *J.:*

In a complaint signed by Lt. Fernando G. Regino, P. A., with the heading "In the Justice of the Peace Court of Tinambac, Camarines Sur," Mamerto Abner was charged, with others, with robbery in band with rape committed in the municipality of Tinambac, Province of Camarines Sur. Upon motion of the assistant provincial fiscal of September 6, 1946, alleging that the justice of the peace of Tinambac was absent and the municipal mayor refused to receive the complaint, the Court of First Instance of Camarines Sur directed the Justice of the Peace of Naga, the capital, to conduct the necessary preliminary investigation. Mamerto Abner was thereafter admitted to bail and the herein appellants, Roberto Soler and Domingo Abella, executed the necessary bail bond for ₱15,000 dated October 4, 1946, and approved by the Justice of the Peace of Naga on the same date. Notwithstanding notice, the accused Abner and his bondsmen failed to appear at the preliminary investigation set for March 26, 1947. On April 2, 1947, Abner, through counsel, filed a petition waiving the right to a preliminary investigation. By order of April 5, 1947, the Justice of the Peace of Naga forwarded the case in respect to Abner to the Court of First Instance of Camarines Sur. On May 8, 1947, the provincial fiscal filed the corresponding information in the Court of First Instance of Camarines Sur. The trial originally set for November 25, 1947, was postponed to January 16, 1948, but upon motion of appellants, the trial was set for March 2, 1948. On February 28, 1948, the appellants filed a motion for another extension of thirty days within which to produce the body of Abner, which was granted, and the trial was again postponed to March 29, 1948. On this date, Abner and the appellants failed to appear. The provincial fiscal accordingly filed a petition for the confiscation of the bail bond executed by the herein appellants, and the same was granted by the Court of First Instance of Camarines Sur in its order of March 31, 1948. From this order the bondsmen have appealed.

Appellants contend that the court of first instance did not acquire jurisdiction, because no complaint was filed in

the Justice of the Peace Court of Tinambac, and reliance is placed on the allegation of the fiscal, in his motion of September 6, 1946, that the complaint signed by Lieutenant Regino was not so filed in view of the absence of the justice of the peace and the refusal of the municipal mayor of Tinambac to receive said complaint. It appears, however, that the bond executed by the appellants on October 4, 1946, contained the following recital: "A complaint having been filed on September 17, 1946 in the Justice of the Peace Court of Tinambac, Camarines Sur * * *." This admission, which is subsequent to the motion of the fiscal of September 6, 1946, is inconsistent with appellants' contention. Moreover, the proceedings had before the Justice of the Peace of Naga and the Court of First Instance of Camarines Sur, in relation to the measures taken by the appellants prior to the confiscation of their bond, carry the implication that the complaint was duly filed. The presumption that official duty was performed has not been destroyed. Although the justice of the peace has jurisdiction to conduct preliminary investigations only of offenses committed within his municipality, the justice of the peace of the provincial capital, when, as in the case at bar, directed by the court of first instance, may conduct such preliminary investigation of any offense committed anywhere within his province. (Sec. 2, Rule 108, Rules of Court.)

It appears that the bond in question was not signed by the accused Abner as principal; and it is contended by the appellants that it is accordingly void. Section 1, Rule 110, of the Rules of Court, provides that "bail is the security required and given for the release of a person who is in the custody of the law, that he will appear before any court in which his appearance may be required as stipulated in the bail bond or recognizance." Under this, there are two methods of taking bail: (1) by bail bond and (2) by recognizance. A bail bond is an obligation given by the accused with one or more sureties, with the condition to be void upon the performance by the accused of such acts as he may legally be required to perform. A recognizance is an obligation of record, entered into before some court or magistrate duly authorized to take it, with the condition to do some particular act, the most usual condition in criminal cases being the appearance of the accused for trial. (Moran, Comments on the Rules of Court, 2d ed., Vol. II, page 592.) In U. S. *vs.* Sunico et al., 48 Phil., 826, 834, this court, citing Lamphire *vs.* State, 73 N. H., 462; 62 Atl., 786; 6 Am. & Eng. Ann. Cas., 615, defined a recognizance as "a contract between the sureties and the State for the production of the principal at the required time." The bail bond executed by the appellants, though so denominated, is essentially a recognizance, an

"obligation" contracted with the State by the appellants, not requiring as an indispensable condition for its validity, the signature of the accused. In addition, under the circumstances of this case, the appellants were estopped from assailing the effectiveness of their bail contract. If, as contended by appellants, it would be difficult, without the accused Abner having signed as principal, for them to obtain indemnity from or to have power and control over him, they are solely to blame. Neither is there merit in the argument that the obligation of appellants under the bond is merely to pay ₱15,000 in case the accused should fail to pay that amount, because the latter, who has not signed it, is of course not bound thereby.

Appellants allege that the Government had launched a campaign for the capture of Abner, dead or alive, as a result of which he is forced to remain in hiding. Thus the appellants are allegedly unable to produce him in court, due to an act of the Government. In the order of the trial court denying appellants' motion for reconsideration, however, it is recited that "if the government launched the campaign against Abner and his followers in Tinambac and Partido during the months of July up to December, 1947, it was because Mamerto Abner and his gang have turned out brigands who threatened to disturb the peace and tranquility of the people in that part of the Province of Camarines Sur." Hence the alleged search for Abner was motivated by his own voluntary act and cannot, therefore, be invoked by appellants. (U. S. *vs.* Sunico, *supra.*)

The appealed order is affirmed with costs against the appellants. So ordered.

Moran, C. J., Pablo, Bengzon, Tuason, Montemayor, and *Reyes, JJ.,* concur.

FERIA, *J.,* concurring:

I concur in the decision with the following modification in connection with the necessity of defendant's signature in his bail bond.

A bail bond in criminal cases is an obligation subscribed, not by the accused, but by two or more sureties for the release of the defendant who is in the custody of the law, conditioned upon that the latter will appear before any court in which his appearance may be required. It is not different from *recognizance,* and for that reason Rule 110 of the Rules of Court uses the word bail bond and recognizance interchangeably. That the law does not require that the bail be subscribed or signed by the accused is shown by the provisions of section 9 which require that, "in case there are only two sureties, each must be worth the amount specified in the undertaking over and above all just debts etc."; by section 15 which provides that, when the appearance of the defendant is required by the court, his

sureties, and not the accused, shall be notified to produce him or a given date in compliance with their obligation stipulated in the bail bond. And if the defendant fails to appear as required, the bond is declared forfeited and the bondsmen are given thirty days within which to produce the accused, and to show cause why a judgment shall not be rendered against them for the amount of their bond; and "failing in these two requisites, a judgment shall be rendered against the bondsmen" (not against the accused); by section 17 which provides that, "for the purpose of surrendering the defendant, the bailors may arrest him, or on a written authority endorsed on a certified copy of the undertaking may cause him to be arrested"; and specially by the form or bail bond found in General Order No. 58, which has not been modified or repealed by the Rules of Court. (Bandoy *vs.* Judge of First Instance of Laguna, 14 Phil., 620, 625.)

Order affirmed.

[No. L-2650. October 27, 1950]

PRIMO EVANGELISTA, petitioner, *vs.* HIPOLITO CASTILLO, respondent

ELECTION CONTEST; VICE-MAYOR OR MUNICIPAL COUNCILORS; NO APPEAL FROM DECISION OF COURT OF FIRST INSTANCE TO APPELLATE COURT.—As was held in the case of Lucena *vs.* Tan (G. R. No. L-2296, September 14, 1949, 47 Off. Gaz., 1121) no appeal to the Supreme Court lies from a decision of the court of first instance in contests for vice-mayor or municipal councilors.

PETITION to review on certiorari a resolution of the Court of Appeals.

The facts are stated in the opinion of the court.

Ramon Diokno, Numeriano U. Babao and *Jose Diokno* for petitioner.

Amado G. Salazar for respondent.

TUASON, *J.:*

This was an election contest for the office of vice-mayor of Mabini, Batangas. The court of first instance declared the contestant the winner by 18 votes over the contestee, the latter appealed to the Court of Appeals, and the appellate court dismissed the appeal on the ground that the trial court's decision was unappealable. We are not requested to review the Court of Appeals' order of dismissal.

In the case of Lucena *vs.* Tan (G. R. No. L-2296, September 14, 1949, 47 Off. Gaz., 1121), the court said:

"*Prima facie* the proposed appeal will involve legal and factual questions.

"Now, is that appeal authorized by law? Section 178 of the present Election Code specifically allows appeal to the Supreme Court or the Court of Appeals (as the case may be) from decisions

of courts of first instance in contests against the election of provincial governors, members of the provincial board, city councilors and mayors. Vice-mayors and municipal councilors are not mentioned.

"In Tajanlangit *vs.* Peñaranda ([1917], 37 Phil., 155), we declared that, in view of the provisions of the Administrative Code, decisions of the courts of first instance in municipal election contests were final and not appealable. The view was premised on the fact that the law directed that all election contests shall be filed with the corresponding court of first instance, which 'shall have exclusive and final jurisdiction except as hereinafter provided * * *' and the further fact that while expressly providing for an appeal in contests of elections for provincial governors, the law contained no provision permitting an appeal in contests involving municipal officers.

"Such ruling was applied in subsequent cases. (De Guzman *vs.* Cuenca, 40 Phil., 203; De la Cruz *vs.* Revilla and Bustos, 40 Phil., 234; Municipal Council of Las Piñas *vs.* of First Instance of Rizal, 40 Phil., 279; Arevalo *vs.* Dalandan, 40 Phil., 475.)

"The present Election Code, unlike the law at the time the above-mentioned cases were considered, does not contain a provision giving 'exclusive and final jurisdiction to courts of first instance'. But the difference should be immaterial, because this court only mentioned such final jurisdiction as *one of the reasons* for holding that no appeal existed. There is the other reason which is still good: the law does not provide for appeal in contests for vice-mayor and councilors, although it expressly allows appeals in contests for other positions.

"In Aguilar and Casapao *vs.* Navarro (55 Phil., 898), we held there was no appeal to this court from the order of a court of first instance denying a petition for authority to correct the election returns, because section 480 of the Election Law (at that time) enumerating the cases appealable to the Supreme Court, did not include such controversial matter. We said, 'a well-recognized principle of law' is 'that an appeal to a higher court may only be taken when the law so provides'.

"On the other hand, the American authorities seem to be of the opinion that in the absence of statute 'no appeal or error proceeding lies from the judgment of a court in an election contest'. (18 American Jurisprudence, 384; *see also* 29 Corpus Juris Secundum, 429, *et seq.*) This is not a denial of equal protection of the laws because the principle applies to all persons similarly situated. And as to due process, this court has held that the right of appeal is statutory and is not a necessary element of due process of law. (U. S. *vs.* Gomez Jesus, 31 Phil., 218; Duarte *vs.* Dade, 32 Phil., 36.)

"We must, therefore, hold that no appeal to this court lies from a decision of the court of first instance in contests for vice-mayor or municipal councilors.

"The decision in Marquez *vs.* Prodigalidad, L–20998 (May 26, 1948), may be deemed an exception to this holding. But herein petitioners do not fall within that exception, because unlike the Marquez case the appealed litigation involves questions of fact, and does not revolve around a question of jurisdiction. Of course it must be understood that those justices who dissented in the Marquez case do not, upon signing this decision, repudiated the views announced in their dissent."

In the case of Marquez *vs.* Prodigalidad, referred to in Lucena *vs.* Tan, *supra*, the court, with Mr. Justice Feria and the writer of this opinion dissenting, made this ruling:

"Creemos, por tanto, que el artículo 178 del Código Electoral Revisado, al disponer expresamente que son apelables las decisiones de los juzgados de primera instancia 'sobre protestas contra la

eligibilidad o la elección de gobernadores provinciales, vocales de la junta provincial, consejales de ciudad y alcaldes,' no ha tenido el propósito de vedar en otras protestas la apelación al Tribunal Supremo sobre cuestiones puramente de derecho, particularmente sobre cuestiones de jurisdicción, o de constitucionalidad de alguna ley, ordenanza, trada u orden ejecutiva."

It will at once be noted from a comparison of the two decisions that in Marquez *vs.* Prodigalidad only questions of law were involved while in Lucena *vs.* Tan both questions of fact and of law, so it was presumed, would be put in issue. It will also be noted that the later case was excluded from the rule laid down in the earlier one because of the presence in the Lucena case of factual controversies. To determine, therefore, which of the two adjudications is to govern the instant appeal, we only have to see whether the case at bar is affected with questions of fact. Briefly, the facts are these:

Primo Evangelista, contestee in the court below, and Hipolito Castillo, contestant, were candidates for vice-mayor of the aforementioned municipality in the general elections held on November 11, 1947. The election returns gave Evangelista 1,283 votes and Castillo, 1,267. Accordingly the municipal board of canvassers proclaimed Evangelista elected with a plurality of sixteen votes over his opponent.

In impugning the election, the protestant alleged frauds, irregularities, and other violations of the Election Law in Precincts 1, 4, 5, 6, 7 and 9. And upon trial the court made these conclusions: "Of the total votes of 1,267 adjudicated to the contestant by the board of canvassers as shown in the election returns for the six precincts in the municipality of Mabini, a total of 5 votes should be deducted; namely, PE–1, PE–4, HC–9, HC–11, and HC–16, leaving a total of 1,262 votes. On the other hand, of the total votes of 1,286 adjudicated to the contestee by the board of canvassers as shown in the election returns, a total of 39 votes, shall be deducted; namely, 1–P, 1–Q, 1–EE, 4–Q, 4–R, 4–H, 6–D, 7–A, 9–V, one vote illegally cast by Albino Maramot, one excess vote in Precinct No. 4, one excess vote in Precinct No. 6 and the 27 ballots which have been found to have been written by one or two hands; and after deducting these 39 votes from the total votes in favor of the contestee are 1,244. Therefore, the contestant has received a plurality of 18 votes over the contestee. Accordingly, the contestant Hipolito Castillo is hereby declared vice-mayor elect of the municipality of Mabini, Batangas."

Roughly, the court below found that some ballots were intentionally marked, some had been prepared by more than one person, and others, which had not been counted in favor of the protestant by the board of canvassers, should, in the opinion of the court, have been so counted. On the other hand, certain ballots credited to the protestee

by the board of canvassers and objected to by the protestant were held valid and properly canvassed for the protestee.

That most or all of these findings are essentially findings of fact is so manifest as to obviate discussion. This being so, the controlling doctrine, as far as this case is concerned, is that announced in Lucena *vs.* Tan, *supra.*

The similarity between the present case and the case just mentioned is implicitly admitted by the protestee's counsel. In the Court of Appeals they suggested that the motion to dismiss the appeal be held in abeyance on the theory "that the question of law raised in the case of Dominador Lucena et al. *vs.* Hon. Judge Tan, G. R. No. 2296, (is) now pending decision in the Supreme Court," insinuating that the decision in that case would be decisive of the case at hand.

There was an incident in the Court of First Instance which properly could have been the subject of a special action, or appeal under the Lucena–Tan doctrine. We refer to the dismissal of the protestee's counter-protest which alleged frauds in Precinct No. 2, frauds which, it was averred, redounded to the protestee's detriment and to the protestant's benefit. The court dismissed that counter-protest upon the objection of the protestant, who contended that the counter-protest did not state facts sufficient to confer jurisdiction of the counter-protest on the trial court in that the counter-protest failed to allege that the counter-protestant had filed a certificate of candidacy for the office in dispute.

But, although this matter is prominently stressed in the brief of the appellant in his appeal by certiorari, it seems to be a fact that he did not appeal to the Court of Appeals from the order dismissing his counter-protest. He appealed only from that part of the decision pertaining to the adjudication of contested ballots by the Court of First Instance on the basis of which the protestant was pronounced the vice-mayor-elect with a plurality of eighteen votes. The clear inference we draw from the pleadings and the briefs before us is that the protestee and appellant was not keenly interested in the recounting of the ballots in Precinct No. 2 and took no steps to challenge the order quashing his counter-protest. Furthermore, there is no showing or allegation that if allowed the counter-protest could by any possibility have changed the result of the decision.

It is our opinion that the decision of the Court of Appeals should be affirmed, with costs against the appellant. It is so ordered.

Moran, C. J., Feria, Parás, Pablo, Bengzon, Montemayor, and *Reyes, JJ.,* concur.

Judgment affirmed.

DECISIONS OF THE COURT OF APPEALS

[No. 4035-R. December 16, 1949]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* FELIX CAAYAO, ANTONIO CAAYAO, MACARIO CAAYAO, and DELFIN CAAYAO, defendants and appellants.

1. CRIMINAL LAW; SERIOUS PHYSICAL INJURIES; DEFORMITY, ITS MEANING.—Deformity means anything that permanently mars or disfigures the normal appearance of a person to such an extent as to produce ugliness (II Kapunan's Revised Penal Code, 635); and in order to be taken into account, must be conspicuous or visible. "Entiendo la misma (deformidad) como un defecto fisico que causa irregularidad en la forma, la cual es apreciable a simple vista * * *." (People *vs.* Garces, CA-G.R. No. 1533, Sept. 17, 1938.) In the case at bar, not a trace of the victim's alleged internal deformity is visible or noticeable on the outside. The fracture on his nose should, therefore, be considered merely as a serious physical injury.
2. ID.; ID.; CONSPIRACY; SIMULTANEITY IN ATTACKING VICTIM, NOT PROOF OF CONSPIRACY; AGGRAVATING CIRCUMSTANCE OF SUPERIOR STRENGTH.—Although the appellants are relatives and had acted with some degree of simultaneity in attacking their victim, nevertheless, this fact alone does not prove conspiracy. It has been fully established that the accused used to stay together in the place called "parada", for the purpose of soliciting passengers for their bus, so that it could hardly be said that if they were there on that day, they had conspired or planned to attack the offended party that particular morning. It is logical to conclude that, upon seeing their brothers engage in a fistic fight with the offended party, the other brothers, also accused, who were near the place, had decided to participate in the affray. Their responsibility, therefore, is individual, and each is liable for the result of his act in the degree and manner of his participation. In the commission of the offense, only the aggravating circumstance of having taken advantage of superior strength is present.

APPEAL from a judgment of the Court of First Instance of Camarines Sur. Surtida, J.

The facts are stated in the opinion of the court.

De Leon & Tiuseco for appellants.

Assistant Solicitor General Ruperto Kapunan, Jr. and *Solicitor Adolfo Brillantes* for appellee.

PAREDES, *J.:*

The Court of First Instance of Camarines Sur sentenced the accused Felix Caayao to suffer an indeterminate penalty ranging from four (4) months of *arresto mayor* to one (1) year, eight (8) months and one (1) day of *prisión correccional;* to indemnify the offended party in the amount of ₱1,500 or suffer the corresponding subsidiary imprisonment in case of insolvency, and the accused Macario Caayao, Antonio Caayao and Delfin Caayao each to suffer

twenty-one (21) days of *arresto menor*, and to pay the proportionate costs. Pedro Caayao, one of the accused, was acquitted.

The prosecution has sufficiently proven the following facts:

Two weeks before April 20, 1948, while driving his car on the Iriga-Buhi highway, Camarines Sur, Dr. Santiago Ortega, wanted to overtake a passenger car, driven by accused Felix Caayao. Despite his repeated requests to give way, Felix ignored him and continued driving his car in the center of the road, thereby blocking the passage. When they reached the barrio of Santa Justina, Felix stopped his car to pick up a passenger. Doctor Ortega likewise stopped and asked Felix why he did not allow him to pass; and as Felix could not offer any satisfactory answer, Doctor Ortega boxed him and then left, without Felix having been able to return the blow. At about 9 o'clock in the morning of April 20, 1948, Doctor Ortega went to the place called "parada" in Iriga, Camarines Sur, parked his car in front of a barber shop, and entered Rillo's store to buy a bottle of brandy for his sick mother. Having made the purchase, he returned to his car, placed the bottle inside and then went to the other side of the street where he conversed for a short while with Crisogono Mora and Desiderio Saavedra. After this conversation, Doctor Ortega went back to his car; but before he could fully sit himself down on the driver's seat, and while his left foot was still on the ground, Felix and his brother, Macario Caayao, suddenly appeared and pushed the door, thereby pinning Doctor Ortega's left leg between the door and the body of the car. While Doctor Ortega was struggling to free himself, Felix gave him a fist blow through the open window of the car which landed on the nose. Doctor Ortega succeeded, however, in opening the door and started to pursue Felix who took to his heels. At this juncture, Pedro Caayao, father of Felix, Antonio Caayao and Delfin Caayao, other brothers of Felix, appeared at the scene; and, together with Macario, indiscriminately delivered fist blows on Doctor Ortega, who defended himself as best he could. Macario hit him on the occipital region; Antonio on the left temple; and Delfin on the right temple. Doctor Ortega, however, could not ascertain where Pedro hit him. The melee was only broken after some minutes, when Juan Alfeler and Esteban Clemeno, both policemen of Iriga, separated the combatants and brought them to the municipal building, for investigation. Doctor Ortega suffered the following injuries, to wit: Contusion with hematoma, interorbital; fracture, nasal septum, contusion with hematoma, base middle finger, right dorsum; abrasion, base, middle finger, right dorsum; contusion, occipital; contusion with hema-

toma, infra-orbital, bilateral; contusion with hematoma, temporal, bilateral, which had required medical treatment for a period of two months and incapacitated Doctor Ortega from engaging in his practice as physician, for the same period of time, and which caused him damages, representing expenses for medicines, medical fees and loss for inability to practise, in the amount of ₱1,500.

The defense, on its part, tended to establish that, with the exception of the contusion and abrasion on the middle finger, Doctor Ortega received the injuries accidentally from the impacts of the side windshield, the upper part of the door and the edge of the roof of the car, on the regions affected, while he and Felix were struggling to open and shut the door of the car. Felix testified that while the complaining witness was already seated in the car behind the steering wheel, he approached and invited him (Dr. Ortega) to settle amicably the incident which happened between them two weeks before on the Buhi-Iriga road; but, instead of attending him, Dr. Ortega shouted at him, saying that he did not care to have any dealings with him, and that he wanted to fight him (Felix); that thereupon, Dr. Ortega opened the door in order to go out of the car, but after his left foot had touched the ground, Felix pushed back the door in order to prevent him from leaving the car; that Dr. Ortega again tried to open the door, but he (Felix) pushed it back; and that during the struggle, and while the complaining witness was yet seated in the car, the lower end of the windshield struck his face as the door was pushed towards him; and when Dr. Ortega stood up to leave the car, after having succeeded in partially opening the door, the upper part of the door hit his nose, as it was being pushed back by him (Felix), and pinned his head between it and the edge of the car's roof.

Evidence was adduced on behalf of Macario, Antonio and Delfin, tending to show that they were not in the place of the incident at the time. Pedro Caayao testified that at 7:30 in the morning of April 20, 1948, Macario left Iriga for Buhi, driving a passenger car, and did not return to Iriga until after 9:30 in the morning. Narciso Bereña declared that at about 6:30 in the morning of that day, he took with him Antonio and Delfin to his land in barrio San Jose, Iriga, to gather coconuts. According to Bereña, the two accused stayed with him until 11 o'clock that morning.

In this appeal, the question of sufficiency of the evidence to warrant the conviction of the appellants and the character of the injuries alleged to have been caused, are raised. We should not lose sight of the fact that two weeks before the date in question, in that incident along the Buhi-Iriga highway, between Felix and Doctor Ortega, the latter had

the upper hand, and Felix had waited for an opportunity to retaliate. Felix himself admitted that he approached Doctor Ortega at the "parada" in order to settle the previous incident. Not having been satisfied with the answer of Doctor Ortega, it is to be presumed that he, and not Doctor Ortega, had commenced the aggression. (U. S. *vs.* Laurel, 22 Phil., 252.) The defense of *alibi* set up by Macario, Antonio and Delfin, merits scanty consideration, in the face of the testimony of Desiderio Saavedra, a merchant of Iriga, and Dr. Ortega himself, whose veracity had not been impeached. The witnesses presented by the defense to sustain its theory, were the accused themselves, who are very close relatives. The testimony of Bereña, an uncle-in-law of the appellants, becomes incredible, when we take into account the fact that he could not even recall the most recent date he was in his land to gather coconuts. It is quite strange that the first and last time Delfin and Antonio had gone with him, to gather coconuts from the land was the date in question. In like manner, it is also strange that Macario could not remember any of his alleged passengers that morning, although, according to him, most of them came from Iriga. It is not explained why the defense failed to present any other witness not related to the accused, in support of their *alibi*.

It is alleged that the testimony of the prosecution witnesses, referring to the position of Doctor Ortega when Felix struck him on the face, is unbelieveable and fantastic. We have carefully examined the evidence, and we agree with the trial court in its opinion that the theory of the defense does not merit serious consideration. The trial court, which had the opportunity to observe the demeanor and conduct of the witnesses in court, and analyze the demonstrations made by them in connection with the incident, found that the testimony of Saavedra and of Doctor Ortega rings with truth. Regarding this matter, the trial court said:

"In the second place, at a demonstration of the incident in the car itself of the complaining witness, it was shown that this accidental impact theory of the defense could not have taken place under the given facts and circumstances. When Felix Caayao was asked to demonstrate how the complainant was hit on the face by the windshield, he seated himself behind the steering wheel and leaned his body towards the left door until his left shoulder touched the door of the car and his face was about an inch distant from the lower end of the windshield. He then stated that when he pushed back the door in order to close it, the windshield struck the face of the complainant. The court noted, however, that with that position of his body—his left shoulder touching the door and his face about an inch from the windshield—it was not possible that his face could be hit by the windshield, because his left shoulder which leaned on the door would prevent the windshield from getting nearer than one inch to his face. This is so, because his body would be pushed inwards as the door which touched his shoulder moved

in, and consequently, his head and face would also go with his body, thereby maintaining the same distance of one inch from the end of the windshield to his face.

Thirdly, it was found at the demonstration that the upper part of the door and the edge of the roof of the car are made of hard and rather sharp metal. If, as claimed by the defense, the complainant was hit on the nose by this position of the door when Felix pushed the door inwards and his head was pinned between it and the other hard, sharp metal on the edge of the roof, the injuries that he would have received would necessarily be a cut and open wound, instead of a contused wound. Such is also the opinion of Dr. Francisco Gomez, the defense expert witness who, after having inspected these parts of the car and found them to be made of hard and rather sharp metal, testified that the impact of these objects on the face, nose and occipital region of the complaining witness would produce a cut and open wound. This well-taken opinion completely disproves, therefore, the theory that the injuries suffered by the complainant were caused by the impact. On the other hand, strongly it corroborates the stand of the prosecution that the said injuries were produced by the first blows received by the complaining witness from Felix, Macario, Antonio and Delfin, because contusions, as everybody knows, could only be produced by blunt and hard instruments like a closed human fist."

This court does not see its way clear to alter the above findings.

Let us come to the nature of the injuries. Doctor Ortega was treated by an oculist, Dr. Santa Maria, for traumatic hemorrhagic retinitis, and examined by Dr. Del Mundo, an optician. Doctor Garcia made a roentgenologic examination of Dr. Ortega's nose. From these examinations, it was discovered that the nasal septum was fractured. From the date of the aggression until November 10, 1948, date of the trial of the case, Doctor Ortega had been suffering from fogging in his eye-sight, as a consequence of the inflammation of the retina and as a result of the blows given him by Felix on his face. He had also other contusions on the temporal (bilateral) and occipital regions; and because of these injuries, Doctor Ortega had been prevented from pursuing his ordinary labor for two months. (See Exhibits A, B, C, D, E, F, and G.) It is, however, alleged by the defense that Doctor Gonzales, is not competent to testify on the X-Ray plates, Exhibits B, C, and D, it not having been previously proven that he was an expert; and, moreover, not having been the person who took the photographs, but Doctor Garcia, the said defense had been deprived of its right to cross-examine the latter. We believe it was unnecessary for Doctor Garcia to testify because Doctor Ortega who, himself is a physician, was competent to declare over the identity of the X-Ray photographic plates, which were delivered to him 30 minutes after Doctor Garcia had taken them in the very clinic.

The defense impugns the findings of the trial court, with respect to the duration of the treatment on the fractured

nose of Doctor Ortega, alleging that the latter could not have been incapacitated from performing his work, because he was able to drive his car immediately after having received the blow. We believe this contention to be unfounded, in view of the uncontradicted, direct and positive testimony of the witnesses for the prosecution, especially Doctor Gonzales who, in his medical certificate, stated that Doctor Ortega "will need medical attendance for not less than 35 days to an indefinite length of time." (Exhibit A.) The offended party himself corroborated this opinion, when he stated on November 10, 1948, that until then, he felt some fogging in his eyes which compelled him to provide himself with eyeglasses, because his vision "has fallen to 62" due to the injury he received (t. s. n., 26), and that he was then suffering pains on the nasal bone and slight headaches. The defense alleged that Doctor Gonzales had not been asked at all on the duration of the treatment of the wounds and contusions of Doctor Ortega. We believe, however, that there was no necessity to do so, because Doctor Gonzales, on identifying and confirming his medical certificate, Exhibit A, had said all that was required on the subject. We agree, however, with the trial judge that, notwithstanding the fracture of the nasal septum, Doctor Ortega was not deformed, as a result of the injuries. The trial judge, who knew the complaining witness for some time before April 20, 1948, and Doctor Francisco Gomez, who is familiar with the complainant, being a colleague in the medical profession at Camarines Sur, after examining the face of Doctor Ortega in court, stated that there is no deformity on Dr. Ortega's nose. Deformity means anything that permanently mars or disfigures the normal appearance of a person to such an extent as to produce ugliness (II Kapunan's Revised Penal Code, 635); and in order to be taken into account, must be conspicuous or visible. "Entiendo la misma (deformidad como un defecto físico que causa irregularidad en la forma, la cual es apreciable a simple vista * * *." (People *vs.* Garces, CA–G. R. No. 1533, Sept. 17, 1938.) As far as the record is concerned, not a trace of Doctor Ortega's alleged internal deformity, is visible or noticeable on the outside. The fracture on the nose of Doctor Ortega should, therefore, be considered merely as a serious physical injury. While the witnesses could not state the exact duration of the treatment of the fracture on the nasal septum, Doctor Ortega, however, stated that he was incapacitated from performing his work for two months. It appearing that the contusions took seven days to heal, it can be inferred that the fracture was the one which had incapacitated said Dr. Ortega from performing his customary labor for two months.

The last question to be decided is the degree of responsibility that each appellant shall have to answer. Although the appellants are relatives and had acted with some degree of simultaneity in attacking their victim, nevertheless, this fact alone does not prove conspiracy. It has been fully established that the accused used to stay together in the place called "parada", for the purpose of soliciting passengers for their bus, so that it could hardly be said that if they were there on that day, they had conspired or planned to attack Doctor Ortega that particular morning. It is logical to conclude that, upon seeing Felix and Macario engage in a fistic fight with Doctor Ortega, the other accused who were near the place, had decided to participate in the affray. The responsibility of the appellants, therefore, is individual, each is liable for the result of his act in the degree and manner of his participation. We find that in the commission of the offense, only the aggravating circumstance of having taken advantage of superior strength is present.

The court, therefore, finds that Felix Caayao is responsible for the fracture of the nasal septum of Doctor Ortega; Macario Caayao, for the contusion on the occipital region; Antonio Caayao, for the contusion on the left temporal region; and Delfin Caayao, for the contusion on the right temporal region; and that the first is guilty of the crime of serious physical injuries, while the last three, of slight physical injuries, with no mitigating circumstance to offset the aggravating circumstance. And considering that the judgment appealed from is in accordance with the facts and law on the case, the same is affirmed, with proportionate costs against the appellants. So ordered.

Labrador and *De Leon, JJ.*, concur.

Judgment modified.

[No. 5328-R. January 13, 1950]

In the matter of the petition for the Habeas Corpus of BENIGNO COCAMAS and VICENTE PATOLTOL, petitioners

1. CRIMINAL LAW; QUALIFIED TRESPASS TO DWELLING; FORCE, ITS MEANING.—Force and violence include or produce fear and intimidation. It has been stated that force means such display of physical power as is calculated to inspire fear of physical harm to those opposing possession of premises by trespassers. (17 Words and Phrases, Permanent Edition. 238.)
2. HABEAS CORPUS; CONSTITUTIONAL RIGHT OF AN ACCUSED TO A SPEEDY TRIAL SUBJECT TO REASONABLE DELAY.—The constitutional right of an accused to a speedy trial is subject to reasonable delay. The records of the instant case show that the delay was attributed to petitioners themselves for having failed to pay the fees of their former counsel and the necessary expenses for the prosecution of their appeal. The petitioners

have already filed their brief in the criminal case, and that, according to the Solicitor General, the brief for the Government is under preparation, to be submitted in due time. There being no sufficient cause to issue the writ of habeas corpus prayed for, the petition hereby is dismissed, without costs. (Sec. 4, Rule 102, Rules of Court.)

ORIGINAL ACTION in the Court of Appeals. Habeas Corpus.

The facts are stated in the opinion of the court.

Amando F. Buenviaje for petitioners.

Assistant Solicitor General Francisco Carreon and *Solicitor Felix C. Makasiar* for the Provincial Warden, Oriental Misamis.

PAREDES, *J.:*

This is a verified petition for a writ of *habeas corpus*, filed by Benigno Cocamas and Vicente Patoltol, represented by counsel *de oficio*, directed against the Provincial Warden of Cagayan, Misamis Oriental. On behalf of the provincial warden, the Solicitor General presented an opposition in due time, admitting paragraphs 1–10, 13 and 16 of the petition, and denying the conclusions of law with respect to paragraphs 11, 12, 14 and 15, and set up two special defenses.

On November 28, 1947, the Provincial Fiscal of Oriental Misamis filed an information (case No. 528, court of first instance of said province), charging the petitioners with the crime of trespass to the dwelling, committed by "means of force and violence, * * * against her (complainant's) will," alleging therein the aggravating circumstance of night time. The petitioners were in jail, as detention prisoners, since November 6, 1947, for their failure to furnish the bail bond. On January 30, 1948, the court sentenced each of them to six (6) months of *arresto mayor* and to pay a fine of ₱200, and in case of insolvency, to suffer the subsidiary imprisonment, not to exceed one-third (⅓) of the principal penalty, with order that they should be credited with one-half (½) of the preventive imprisonment thus far undergone by them. On February 14, 1948, they presented a notice of appeal; and the case was elevated to this court on March 23, 1948, docketed as Case No. CA–G. R. No. 2568–R. The petitioning counsel was appointed as attorney *de officio* on November 2, 1948.

The petitioners contend now (1) that in view of the terms of the decision of the trial court, they have already served more than what could lawfully be imposed and required of them (16 months of preventive imprisonment), by an excess of more than eight months; and (2) that they are entitled as a matter of right, under the Constitution and the Rules of Court, to a speedy trial, which was denied them when the Court of Appeals let the appeal

pending for 1 year and 7 months, before appointing an attorney *de officio* considering the fact that they are detained prisoners.

The trespass alleged in the information is qualified by means of force and violence, punishable under paragraph 2 of article 280, Revised Penal Code, by *prisión correccional* in its medium and maximum periods, or from 2 years, 4 months and 1 day to 6 years, and a fine not exceeding ₱1,000. Contrary to the trial court's findings, the qualifying circumstance of "intimidation", though not expressly, has been sufficiently alleged in the information, when it says that the petitioners herein entered the house of the complainant by means of force and violence against her will. It is unnecessary to stretch our imagination, in order to conclude that force and violence include or produce fear and intimidation. It has been stated that force means such display of physical power as is calculated to inspire fear of physical harm to those opposing possession of premises by trespassers. (17 Words and Phrases, Permanent Edition, 238.)

The correctness or not of the trial court's conclusion to the effect "that the trespass was committed with intimidation," which is not expressly alleged in the information, can not be definitely resolved without going into the merits of the criminal case itself, upon submission of the briefs of the parties herein. Suffice it to say, however, that the allegation of the information, would justify the conviction of the petitioners, under said article 280, paragraph 2, if, according to the evidence, either "violence or intimidation" had been employed in the commission of the trespass. And if the alleged aggravating circumstance of night time, is proven, the maximum period of the imposable penalty, that is, 4 years, 2 months and 1 day to 6 years, may still be meted out to them.

The petitioners were not denied a speedy trial. The constitutional right invoked is subject to reasonable delay. The records of the criminal case show that the delay was attributed to petitioners themselves for having failed to pay the fees of their former counsel and the necessary expenses for the prosecution of their appeal. The petitioners have already filed their brief in the criminal case, and that, according to the Solicitor General, the brief for the Government is under preparation, to be submitted not later than the due date, January 22, 1950.

In view hereof, and there being no sufficient cause to issue the writ prayed for, the petition hereby is dismissed, without costs. (Sec. 4, Rule 102, Rules of Court.) So ordered.

Labrador and *Natividad, JJ.*, concur.

Petition dismissed without costs.

[No. 3145-R. January 14, 1950]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* ADVINCULO CLOMA, defendant and appellant

1. CRIMINAL LAW; EVIDENCE; WITNESSES, COMPETENCY OF; CO-ACCUSED DISCHARGED FOR INSUFFICIENCY OF EVIDENCE, COMPETENT WITNESSES AGAINST ACCUSED.—There is no prohibition in the law that an accused, after having been discharged from the information before the prosecution has presented its evidence, could not be utilized as witness against his co-accused or in favor of the latter. On the other hand our Supreme Court has even held that a co-defendant who is one of a number of persons charged with the crime and whose case has been disposed of by the plea of guilty, is yet a competent witness for the prosecution on the subsequent trial of one who is charged with him. (People *vs.* Francisco de Otero et al., 51 Phil., 201.) Furthermore, the two accused in the instant case were dismissed on the ground of insufficiency of evidence and not on the grounds enumerated in Rule 115, sec. 9 of the Rules of Court cited by the appellant. Therefore, non-compliance with the requisites of Rule 115, sec. 9, of the Rules of Court, does not preclude the use of the testimony of the witnesses by the prosecution. (People *vs*, Agasang, 60 Phil., 182, 184–185.)

2. ID.; FALSIFICATION OF PUBLIC DOCUMENT; CASE AT BAR.—By making it appear in a form of marriage contract that a marriage had been celebrated when in truth and in fact there was no such celebration, the accused, in signing the same, right then and there committed the crime of falsification of public document, the form being a public document. (People *vs.* Leonidas 40 Off. Gaz., 4th supplement, 101; People *vs.* David, Off. Gaz., 2605.) And having registered this document in the office of the corresponding local civil registrar he consequently gave a false fact to be registered by said civil registrar and this also constitutes the crime of falsification of public documents.

APPEAL from a judgment of the Court of First Instance of Misamis Occidental. Solidum, J.

The facts are stated in the opinion of the court.

Luis Q. Sarmiento for appellant.

First Assistant Solicitor General Roberto A. Gianzon and *Solicitor Martiniano P. Vivo* for appellee.

OCAMPO, *J.:*

In the Court of First Instance of Misamis Occidental, an information was filed against Advinculo Cloma, Filomena Lumantas, and Francisco Virtudes, which reads as follows:

"That in and during the period comprised between October 29, 1947 and November 7, 1947, in the municipality of Jimenez, Province of Occidental Misamis, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and helping one another in their common intent to defraud and cause damage and prejudice to the parents and legal heirs of the deceased Corazon Dampor, did then and there commit acts of falsification in a public document, in the following manner, to wit:

"1. That the accused Advinculo Cloma, at said time and place, wilfully, unlawfully and feloniously imitated, simulated and counterfeited the handwriting or signature of Corazon Dampor in a Marriage Contract, wherein he is the male contracting party, and the accused Filomena Lumantas and Francisco Virtudes, wilfully, unlawfully and feloniously signed as witnesses to said signature, thereby making it appear that Corazon Dampor signed her name in their presence, when in truth and in fact, as all the said accused well knew, she never wrote such signature which they also knew to be a forgery.

"2. That the said three accused, taking advantage of marriage contract forms prepared by Reverend Cesar Lofranco, wilfully, unlawfully and feloniously, caused it to appear in the aforesaid Marriage Contract that Corazon Dampor and Advinculo Cloma, by her supposed signature, were respectively the female and male contracting parties in a marriage ceremony supposedly solemnized by Rev. Cesar Lofranco in the house of Rufino Talibong in Sumasap, Jimenez, Occidental Misamis, on October 29, 1947, when in truth and in fact, as all the said accused well knew, no such marriage ceremony ever took place nor was solemnized by the above-named priest between the said parties at said time and place, this imaginary marriage, having been conceived and concocted by the said accused well after the demise of said Corazon Dampor on November 4, 1947.

Before the arraignment of the accused, the case was dismissed with respect to the two of them—Filomena Lumantas and Francisco Virtudes, upon petition of the provincial fiscal. So the only one who was tried under this information was Advinculo Cloma.

After due trial the lower court found Advinculo Cloma guilty beyond reasonable doubt of the crime of falsification of public document and sentenced him to suffer an indeterminate penalty of from one (1) year and eight (8) days to three (3) years, six (6) months and twenty-one (21) days of *prisión correccional,* with the accessory penalties provided by law; to pay a fine of two thousand pesos with subsidiary imprisonment in case of insolvency, and the costs. From this judgment the accused appealed and in his brief made the following assignments of errors:

"I. The court erred in permitting the co-accused Filomena Lumantas, and Francisco Virtudes to testify against the accused after the information against them was dismissed upon the provincial fiscal's oral motion to dismiss on the ground that upon his investigation he did not have sufficient evidence to convict them.

"II. The court erred in requiring the accused, over counsel's objection to testify on his activities during the Japanese occupation.

"III. The court erred in finding the accused guilty of registering a falsified marriage contract, after it conceded that the signatures of Corazon Dampor in Exhibits "B", "C", "D", "E", "F", "F-1", and "1" are genuine and authentic.

"IV. The court erred in disregarding the testimony of Juliana Dampor.

"V. The court erred in finding that no marriage ceremony was performed.

"VI. The court erred in disregarding the testimony of Bernabe Palanas, corroborated by Delfin Glinogo.

"VII. The court erred in finding that the accused's testimony that he did not marry Corazon earlier because of the existence of

the first marriage to Florentino Olviña and that he knew of the death of the latter on September 27, 1947, is belied by the affidavit, Exhibit "C", to the effect that Florentino Olviña died on January 23, 1947.

"VIII. The court erred in convicting the accused against the weight of evidence and contrary to law."

In our opinion, these eight errors alleged by the appellant as committed by the trial court in its decision can be reduced to two propositions: first, whether the trial court erred in allowing or permitting Filomena Lumantas and Francisco Virtudes to testify as witnesses for the prosecution; and second, whether the evidence adduced by the prosecution has established the guilt of the appellant beyond reasonable doubt.

Regarding the first proposition, we find that the trial court did not commit any error when Filomena Lumantas and Francisco Virtudes were permitted to testify as witnesses for the prosecution. It seems that the appellant, in contending that the trial court committed error when it permitted Filomena Lumantas and Francisco Virtudes to testify for the prosecution, based his contention on the fact that said witnesses were not excluded from the information for the purpose of being utilized as such witnesses. This contention is untenable, because in the first place, there is no prohibition in the law that an accused, after having been discharged from the information before the prosecution has presented its evidence, could not be utilized as witness against its co-accused or in favor of the latter. On the other hand our Supreme Court has even held that a co-defendant who is one of a number of persons charged with the crime and whose case has been disposed of by the plea of guilty, is yet a competent witness for the prosecution on the subsequent trial of one who is charged with him. (People *vs.* Francisco de Otero et al., 51 Phil., 201). Furthermore, as correctly pointed out by the Solicitor General, the two accused were discharged on the ground of insufficiency of evidence and not on the grounds as enumerated in Rule 115, section 9 of the Rules of Court cited by the appellant. Therefore, non-compliance with the requisites of Rule 115, section 9, of the Rules of Court, does not preclude the use of the testimony of the two witnesses by the prosecution. (People *vs.* Agasang, 60 Phil., 182, 184–185.)

In the second place, the two witnesses mentioned above are not disqualified to be witnesses for the prosecution as they are not among the persons mentioned in the provisions of section 26 of Rule 123 of the Rules of Court.

With regard to the second proposition, the record shows that the appellant and the deceased, Corazon Dampor, had cohabited since February 13, 1943 until the date of her death on November 4, 1947. From their illicit relations

a child was born which survived Corazon Dampor. When she died, the deceased also left several properties which she had inherited from her father, consisting of coconut plantations and rice lands.

The record further shows that in the afternoon of October 29, 1947, the appellant went to see Rev. Cesar Lofranco of the Philippine Independent Church in his residence at barrio Sinacaban, municipality of Jimenez, Province of Misamis Occidental, telling the latter that he wanted to be married with Corazon Dampor in the evening of that very day in the house of her relatives at barrio Sumasap. Rev. Lofranco consented to perform the marriage in his own church but the appellant begged that the marriage be solemnized in the residence of Corazon Dampor because she was very ill. So the priest acceded to the appellant's request and in order to facilitate the ceremony, Rev. Lofranco prepared and signed the contract of marriage beforehand, together with its copies. After signing these documents he delivered them to the appellant who promised to return that same evening to take the said priest to the house of Corazon Dampor's relatives where the marriage ceremony was to be performed. But the appellant did not come back as he had promised and consequently Rev. Lofranco did not celebrate any marriage in the evening of October 29, 1947 nor in any other day, between Advinculo Cloma and Corazon Dampor.

It also appears from the record that the appellant on coming from the house of Rev. Lofranco, met Francisco Virtudes and asked the latter to sign the marriage contract, Exhibits F, F–1, and 1, as a witness; that Virtudes signed the contract when assured by appellant that he was going to marry Corazon Dampor who was seriously ill, that very same evening and that he would take Virtudes to the house of the parents of Corazon Dampor where the marriage was to be performed so that he may witness it. Immediately afterwards the appellant also approached Filomena Lumantas and told her the same things and so the latter also signed the aforementioned contracts because of the same assurance made by the appellant. However, appellant did not take these two persons, Francisco Virtudes and Filomena Lumantas, to the house of Corazon Dampor, in the evening of October 29, 1947, as he had promised. Consequently, these two never actually witnessed the performance of the alleged marriage ceremony.

On November 7, 1947, shortly after the death of Corazon Dampor, the appellant presented for registration, the marriage contract, Exhibits F, F–1, and 1 to the municipal treasurer of Jimenez, Misamis Occidental, who is the local civil registrar there. Once these documents were registered the appellant claimed from the mother of the de-

ceased Corazon Dampor, the administration of the properties of the deceased. The mother, knowing that her daughter was never married to the appellant, refused to deliver the properties to the latter. Instead she reported the matter to the provincial fiscal's office.

The defense tried to overthrow the theory of the prosecution through the testimony of the appellant and the witness Epifanio Talibong. In synthesis the defense tried to establish the following: that the appellant and the deceased, Corazon Dampor, had been living together as husband and wife since 1943, in the house of her mother, Romana Sagrado and her step-father, Rufino Talibong; that they were not married right away because they were not yet sure that the first husband of Corazon Dampor who had left her before the outbreak of the war, was already dead; that appellant took Corazon Dampor to Manila several times for the treatment of her tuberculosis; that on one of these trips a daughter was born whose birth was duly registered in the office of the Civil Registrar of Manila; that during the last time that appellant took Corazon Dampor to Manila in September, 1947, she brought up the subject of marriage because this time they were already certain of the death of her first husband; that appellant convinced her that it would be better to wait until they reached home so that their parents could attend the marriage ceremony; that upon their return, Corazon, aware of her approaching death, urged the appellant to have their marriage solemnized; that the appellant talked to Corazon's mother regarding the matter but that the latter refused to consent to the marriage because she believed that all he wanted was merely to get her daughter's properties; that upon hearing this Corazon cried and told the accused to get a priest to solemnize their marriage; that appellant secured the necessary application blanks and requested the clerks of the municipal treasurer's office to accompany him to his cottage in barrio Sumasap to secure Corazon Dampor's signature inasmuch as she could not come herself due to her grave illness; that the two clerks left their office at 5:20 o'clock in the afternoon of October 29, 1947, and accompanied the appellant to the house of Corazon Dampor where they secured her signature; that the accused then left Corazon in the care of Epifanio Talibong, the brother of Corazon's step-father, while he went to get a priest; that as Reverend Rivera was not in town he went to the barrio of Sinacaban and was able to secure the services of Cesar Lofranco, a priest of the Philippine Independent Church, who agreed to solemnize the marriage upon the payment of ₱20 plus a typewriter; that after taking his supper Rev. Lofranco, accompanied by the appellant, took the last trip of the autobus to perform the ceremony in appellant's cottage

which was about eight kilometers away; that upon arriving at the *cetro* of Jimenez the appellant got off the bus but directed the priest to proceed to a certain place and wait for him there while he fetched the necessary witnesses; that he secured Francisco Virtudes and Filomena Lumantas who consented to come with him and act as witnesses; that they all met at the designated place and then proceeded to the cottage where the priest performed the marriage ceremony; that after the ceremony appellant was advised by the priest to call for his papers within fifteen days which he did accordingly; that he was then instructed to register the marriage contract in the municipal treasurer's office and deliver to the priest the coupon of the certificate of registration; that later the priest demanded for the typewriter which appellant promised to give as payment for his services; that appellant was unable to deliver the typewriter and it is for this reason, appellant believes that the priest testified against him in this case; that Romana Sagrado, Corazon's mother, also testified against him because she is personally interested in securing for herself the properties of her daughter, Corazon, over whom she was appointed guardian but to whom she has been unable to render an accounting in spite of the fact that Corazon was already twenty-eight years old when she died; that in fact, about one month after the trial of this case in the lower court but before the decision was rendered, she presented a petition for guardianship over the two infant children of Corazon, Charito Olviña, her son by the first marriage, and Edna Cloma, her daughter by the appellant.

The solution of this question therefore, hinges entirely on the credibility of the opposing witnesses. We find in the record that the mother of the deceased, Corazon Dampor, also testified as a witness for the prosecution. She stated that her daughter was never married to the appellant in her house for she did not witness any ceremony taking place there and that she never left her daughter alone, considering the seriousness of her condition. The trial court in refusing to give credence to the theory of the defense, among other things, said:

"Again, the circumstances under which said marriage was supposed to have taken place, as testified to by the accused and his witness, Epifanio Talibong, at ten o'clock in the evening of October 29, 1947, in the house of Corazon Dampor and in the absence of her mother, Romana Sagrado, do not lend themselves to the truthfulness of the celebration of said marriage. At the time Corazon Dampor was already seriously ill, and being in that condition, the court does not believe that she was ever left alone. Rather the court lends credit to the testimony of her mother, Romana Sagrado, that for a whole week before the death of Corazon on November 4, 1947, she never left her alone because of her serious illness."

Furthermore, the testimony of the four witnesses must be given credence because none of them was shown to have any enmity for the appellant. No ulterior motives on the part of these witnesses were proven in order to impeach their credibility. For this reason we do not see any reasonable ground to alter the conclusion of the trial court and we do hereby declare that the alleged marriage has never been solemnized by Rev. Cesar Lofranco.

From the facts proven, especially from the circumstance that the appellant did not present for registration Exhibits F, F–1 and 1 to the civil registrar for the municipality of Jimenez, Misamis Occidental, before the death of Corazon Dampor, we can also deduce and we deduce that said appellant, in making the falsification of the marriage contract had two purposes: In case Corazon Dampor would recover from her illness he would still be free to marry another woman if he wished to do so as there was no marriage between him and Corazon Dampor; but in case she would die, as in fact she died, the appellant would make representations to the relatives of the deceased that he was married to her and then claim, as guardian of their child, Edna Cloma, the administration of the properties, that the child as one of her heirs has inherited. To do this he would present the marriage certificate to the civil registrar of the municipality of Jimenez for registration, as in fact he did after the death of Corazon Dampor.

The last question to be resolved, although it has not been raised by the defense, is whether the appellant committed the crime of falsification of public documents notwithstanding the fact that the appellant was not the person who prepared the contract of marriage, Exhibits F, F–1 and 1.

The appellant alleges that he was married to Corazon Dampor when in fact he was not. In Exhibits F, F–1 and 1 there appears the signature of the appellant and the deceased, Corazon Dampor. The appellant does not deny his signature appearing there. If this is the case the appellant caused it to appear that he had participated in the act mentioned in the documents, Exhibits F, F–1 and 1, when in fact he did not so participate—when in fact there was no marriage ceremony performed. Furthermore, he also made it appear that the persons whose signatures appear in the document as witnesses did in fact participate as such when in truth they did not so participate. Article 171, paragraph 2 of the Revised Penal Code provides that falsification is committed by "causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate." In the case of State *vs.* Boasso, 38, La. Ann. 202, it was held that:

"There can be forgery of a certificate of marriage where no marriage was ever celebrated just as there can be forgery of a

promissory note where there was no indebtedness of the maker whose name is forged. As there can be a pretended marriage so there can be forgery of a certificate of marriage that never took place."

The contract of marriage duly filed and signed by the appellant (Exhibits F, F–1 and 1) was made on forms issued by the government. Said marriage contract, besides other matters, contains the following printed words and figures: "Municipal Form No. 97 (Revised, 1939)," "Republic of the Philippines," "Register No. .....," and "Marriage Contract." This form seems to be issued in accordance with the Marriage Law, Act No. 3613. By making it appear in this form that a marriage had been celebrated when in truth and in fact there was no such celebration, the accused, in signing the same, right then and there committed the crime of falsification of public document, the form being a public document. (People *vs.* Leonidas, 40 Official Gazette 4th Supplement, 101; People *vs.* David, Off. Gaz., 2605.) And this is not all that the appellant did. He also had this document registered in the office of the local civil registrar, the municipal treasurer of the municipality of Jimenez, Misamis Occidental. Consequently he gave a false fact to be registered by said civil registrar and this also constitutes the crime of falsification of public documents.

In his brief the appellant assigned as an error committed by the trial court the fact that it required the appellant over counsel's objection, to testify on his activities during the Japanese occupation of the Philippines. We found in the record that the trial court really permitted the fiscal to inquire from the appellant about his activities during the Japanese occupation and not only that but the court itself directed questions to the appellant on this particular matter.

We agree with the opinion of the defense that on this point the trial court has committed an error because even admitting that the appellant was a collaborator, this fact is not relevant to the question in issue. The appellant is charged with the crime of falsification of public documents. Therefore, whatever may have been his activities during the Japanese occupation, it could not affect the merits of this case. The only fact relevant to the case is whether the appellant had performed acts which constitute the crime of falsification of public documents. For this reason we can presume that the trial court, after having convinced itself that the activities of the appellant during the Japanese occupation were immaterial to this case, did not base its conclusion on said facts when it declared the herein appellant guilty of the aforesaid crime of falsification of public documents. This is also our reason why in this decision we said that the eight errors alleged by the appellant in his brief could be reduced to two proposi-

tions only: first, whether the trial court erred in allowing or permitting Filomena Lumantas and Francisco Virtudes to testify as witnesses for the prosecution; and second, whether the evidence adduced by the prosecution has established the guilt of the appellant beyond reasonable doubt.

In the light of the foregoing considerations we declare that the appellant is guilty of the crime of falsification of public documents defined and penalized under article 172, paragraph 1, in connection with article 171, paragraph 2 of the Revised Penal Code, without any modifying circumstances. Therefore, the judgment appealed from, being in accordance with law and the merits of the case, is hereby affirmed with costs in both instances against the appellant.

Endencia and *Felix, JJ.*, concur.

Judgment affirmed.

[No. 3806-R. January 14, 1950]

FELISA A. TANCHICO, plaintiff and appellant, *vs.* ALFONSO RAMOS and MAXIMILIANO AGCAOILI, defendants and appellees.

PLEADING AND PRACTICE; JUDGMENT ON THE PLEADINGS.—In judgment on the pleadings, all the material allegations of the complaint which are not denied by the defendant are admitted; on the other hand, all the material allegations of the answer which are not controverted by the complaint are also admitted. Rule 35, section 10. (La Yebana Company *vs.* Sevilla, 9 Phil., Rep. 210; Bauerman *vs.* Casas et al., 10 Phil., 386; 10 P.R.A. 189; Francisco's Rules of Court, Vol. I, p. 794.) But since in this case the material allegations of the complaint are contradictory to the material allegations of the answer, judgment on the pleadings is not possible, for there would be nothing on which to base the judgment.

APPEAL from a judgment of the Court of First Instance of Rizal. Tan, J.

The facts are stated in the opinion of the court.

Capistrano & Azores for appellant.
Reyes & Agcaoili for appellees.

JUGO, *Pres. J.:*

On March 9, 1948, the plaintiff filed in the Court of First Instance of Manila a complaint, alleging in substance that on February 24, 1947, the plaintiff and the defendant Alfonso Ramos executed a compromise agreement in writing, signed by both and also by the defendant Maximiliano Agcaoili not only as a mere witness, but with the understanding that he would guarantee the performance of the obligations set forth in said compromise agreement, marked Exhibit A; that this compromise was the result

of an accident that had occurred between the truck T–10548 driven by Alfonso Ramos and owned by Agcaoili and the jeep No. T–8–468 owned by the plaintiff and driven by her son Emmanuel A. Tanchico, on the bridge at Talon, Las Piñas, Rizal; that according to the terms of said compromise there was due from the defendants to the plaintiff the sum of ₱2,000 for the reason that the defendants had failed to make the necessary repairs on the damaged jeep within the period stipulated in said agreement; that there is due from the defendants to the plaintiff the sum of ₱2,000 which had not been paid notwithstanding the demands made by the plaintiff; and that the plaintiff had incurred medical expenses in the sum of ₱300 for the injuries suffered by her son Emmanuel and other passengers as a result of the collision. The plaintiff asked for judgment for the sum of ₱2,300.

In their answer filed on April 24, 1948, the defendants alleged that they had never assumed the obligation of paying the the sum of ₱2,000; that they had no way of ascertaining the truth of the allegation regarding the sum of ₱300 as medical expenses; that Agcaoili had signed the compromise above mentioned as a mere witness and that if he had assumed any liability at all under said agreement, it was merely to insure the return of the plaintiff's jeep if the same was brought by his co-defendant to Lucena for repairs; that the jeep had never been taken by the defendant Alfonso Ramos from the plaintiff because of the latter's failure to deliver it at the appointed time and place, contrary to the agreement; and that inasmuch as the jeep had never been taken by Alfonso Ramos due to the failure of the plaintiff to comply with her part of the agreement, the defendants had no obligation to pay whatsoever the sum sought in the complaint.

As a counterclaim, the defendants prayed for judgment for the sum of ₱500 as attorney's fees on account of the unjustifiable filing of the complaint.

The defendants prayed that the complaint be dismissed and that they be awarded the sum of ₱500.

Trial was held by the court on June 11, 1948, after due notice to the parties, but as the defendants did not appear the court received the evidence of the plaintiff.

On June 15, 1948, the court rendered judgment against the defendants and in favor of the plaintiff for the sum of ₱2,000 with legal interest from the date of the filing of the complaint plus ₱300, with costs against the defendants.

On July 5, 1948, the defendants filed a motion for new trial. The court granted this motion in order to allow the defendants to present their evidence, setting the new trial for July 26, 1948. At the new trial the defendants did not present any evidence.

After the new trial, the court modified its former decision sentencing the defendant Alfonso Ramos to pay ₱2,000 to the plaintiff, with costs, but absolving completely the defendant Maximiliano Agcaoili.

The plaintiff appealed, making the following assignment of errors:

"I

"The lower court erred in granting the petition of the defendants-appellees for new trial notwithstanding the absence of a legal ground for the allowance thereof.

"II

"The lower court erred in declaring that defendant-appellee Maximiliano Agcaoili was only a witness to Exhibit 'A' and the present case was not presented to hold the latter liable.

"III

"The lower court erred in not confirming its decision dated June 15, 1948, but instead rendered a new and different one dated July 27, 1949 (1948), which was not supported by evidence of record."

The facts of this case may be summarized as follows:

On February 24, 1947, the jeep No. T–8–468 belonging to the plaintiff was damaged by the truck No. T–10548 driven by Alfonso Ramos and owned by Maximiliano Agcaoili, at the bridge in barrio Talon, Las Piñas, Rizal, due to the fault of Alfonso Ramos. The incident was investigated by the Sergeant of Police of Las Piñas, Elino Cristobal, to whom Ramos admitted his guilt. The sergeant testified as follows:

"A. The truck and the jeep collided near the Talon Bridge at Las Piñas, Rizal. The driver of truck No. T–10548 admitted his guilt in this accident. This matter was reported to me by a policeman. Driver Alfonso Ramos told Mrs. Tanchico that he could not pay the amount of the damage in full. So he requested that he be allowed to bring the jeep to Lucena.

"Q. How about Mr. Agcaoili, did he say anything?—A. He said he will guarantee payment of the damage in case the driver can not pay, being the owner.

"Q. Is that the same Maximiliano Agcaoili who signed this agreement?—A. Yes, sir.

"Q. Did he read this agreement before he signed it?—A. Yes, sir.

"Q. Where did they sign this agreement?—A. In the Municipal Building of Las Piñas in the Office of the Police Department.

"Q. Who made this agreement?—A. I was the one who prepared it.

"Q. In the presence of both parties?—A. Yes sir.

"Q. Of all parties who signed that?—A. Yes, sir." (pp. 3–4, t. s. n.)

The plaintiff, Felisa A. Tanchico, testified in part as follows:

"Q. Showing to you this document which has been marked as Exhibit A for the plaintiff, please relate before the court what transpired before its execution?—A. In the morning of February 24, 1947, my son Emmanuel came to our house and told me that the jeep fell in the bridge of Talon, Las Piñas, Rizal and the two

passengers were injured. I asked them where the wounded passengers were taken and they told me they were brought to the New Bilibid Prisons in Muntinglupa. I went there and I saw Isabelo Mangulabnan and Marianito Zabala both injured. I brought the two passengers to Las Piñas, Rizal. There I saw the driver of the truck Alfonso Ramos who was apprehended by the policeman and the owner of the truck, Maximiliano Agcaoili and another companion, Mr. Cuevas, who informed me that he was an employee in the Provincial Capital of Quezon Province. Maximiliano Agcaoili further informed me that he was the son of the Provincial Treasurer of Quezon. They pleaded to me not to file any complaint and they would restore the jeep in the same condition as it was before the accident. Knowing that Alfonso Ramos, the driver, may not be able to repair the jeep within 15 days as per our agreeemnt, I asked Mr. Agcaoili if he was willing to guarantee the performance and he answered 'yes'. He further stated that as he was traveling from Quezon to Manila, he will do everything to protect his name. So we had this agreement (Exhibit A) made. I put the value of the jeep at ₱2,000 in case they fail to put the jeep in the same condition as it was before the accident and that they would take the jeep from Talon to Lucena for repair to which I agreed. Because of the written agreement we had and of the further fact that he assured me that he was going to perform his part of the agreement, being the son of a responsible man, the Provincial Treasurer of Quezon, I agreed." (pp. 5–6, t. s. n.)

She further stated that she paid for the medical treatment of the two injured passengers, Marianito Zabala and Isabelo Mangulabnan in the sum of ₱300. She also declared that the defendants have not made any repairs on the damaged jeep nor did they pay the sum of ₱2,000, plus ₱300, which she demanded from them. With regard to the jeep, she testified as follows:

Q. Where is your jeep now?—A. The jeep was left at the roadside near the Mackay Radio Station, Muntinglupa, Rizal, because of our understanding that they would take it for repair to Lucena.

"Q. When did you transfer the jeep to that place?—A. On that very day.

"Q. What happened to the jeep?—A. The parts of the jeep were looted, except the engine block which is the only part remaining.

"Q. Is that engine block still there?—A. Even that was already stolen.

"Q. What was the value of your jeep?—A. I bought it for ₱2,000." (p. 9, t. s. n.)

The agreement prepared by the Sergeant of Police, Elino Cristobal, marked Exhibit A, reads as follows:

"REPUBLIC OF THE PHILIPPINES
"MUNICIPALITY OF LAS PIÑAS
"PROVINCE OF RIZAL

"KASUNDUAN

"Kaming, sina, Alfonso Ramos choper nang truck No. T–10548 na pagaari ni Maximiliano Agcaoili na pawang taga Lucena, Quezon, at Felisa A. Tanchico na mayari nang jeep No. T–8–468 na naninirahan sa 184 Dolores, Pasay, Rizal, ay malayang nagsasalaysay nang mga sumusunod:

"Na akong si Alfonso Ramos ay nangangakong aking ipagagawáng lahát ang kasiraán nang jeep No. T–8–468 at tuloy ilalagay

ko ang jeep sa mabuting kaayusán dahil sa nangyaring accidente sa aming sa Talon, Las Piñas, Rizal, sa aking truck No. T–10548 na pinalalakad at sa jeep No. T–8–468 na pinalalakad ni Emmanuel A. Tanchico na naninirahán sa 184 Dolores, Pasay, Rizal. At ako'y tuloy nanagot na ibabalik ko ang jeep sa kay Mrs. Felisa A. Tanchico sa loob nang labing limang araw (15) mula nang gawaing ang kasunduang ito. At ang aking amo na si Maximiliano Agcaoili ang siyáng biláng piyador sa kasunduan at biláng parang mananagot kung hindi ko maibalik ang jeep sa loob nang labing limáng araw.

"At ako namán Felisa A. Tanchico, bilang mayari nang jeep No. T–8–468 na pinalalakad nang aking anák na si Emmanuel Tanchico ay hindi na maghahabol sa alin mang hukumán sa nangyaring kapinsalaán nang aking anak, mga kasama at nang aking jeep na nagkakahalaga nang ₱2,000 kung makatutupad si Alfonso Ramos sa aming kasunduan.

"Sa katunayan nang lahát nang ito ay lumagda kami nang aming pangalan at apellido ngayon ika 24 nang Febrero 1947, dito sa Las Piñas, Rizal, sa harap nang dalawang saksi.

(T) *"Felisa A. Tanchico*

(T) *"Felisa A. Tanchico*

(Sgd.) "ALFONSO RAMOS

(T) *"Alfonso Ramos*

"Subscribed and sworn to before me this ———— day of February 1947 at Las Piñas, Rizal.

"PEDRO T. LOPEZ
"Justice of the Peace"

"Witnesses:

(Sgd.) "MAXIMIANO AGCAOILI
(Sgd.) "CUEVAS

"True copy:

(Sgd.) ENRIQUE AL. CAPISTRANO" (pp. 5–7, R. A.)

At the new trial, as above stated, no evidence was presented by the defendants, and they did not move on any ground for the striking out of any part of the evidence for the plaintiff presented at the former trial, in view of the fact that they had had no opportunity to object at the first trial to any part of said evidence.

With regard to the first assignment of error in which it is claimed that the lower court erred in granting the new trial, suffice it to say that as the granting of the new trial was discretionary, this court cannot review it.

We shall consider together the two other errors assigned.

The appellee contends that the case was submitted at the second trial for judgment on the pleadings. Nothing in the record shows that the plaintiff agreed to submit the case on the pleadings. It is true that in its second decision the trial court states that the case was submitted by both parties for judgment on the pleadings, but this is not borne out by the record. There must have been an error on the part of the lower court on this point, for in this case judgment on the pleadings is not possible. In judgment on the pleadings, all the material allegations of

the complaint which are not denied by the defendant are admitted; and, on the other hand, all the material allegations of the answer which are not controverted by the complaint are also admitted. Rule 35, section 10 read as follows:

"*Judgment on the pleadings.*—Where an answer fails to tender an issue, or otherwise admits the material allegations of the adverse party's pleading, the court may, on motion of that party, direct judgment on such pleading, except in actions for annulment of marriage or divorce wherein the material facts alleged in the complaint shall always be proved."

"3. One who prays for judgment on the pleadings without offering proofs as to the truth of his own allegations, and without giving the opposing party an opportunity to introduce evidence, must be understood to admit the truth of all the material and relevant allegations of the opposing party, and to rest his motion for judgment on those allegations taken together with such of his own as are admitted in the pleadings. (La Yebana Company *vs.* Sevilla, 9 Phil., Rep., 210.) Bauerman *vs.* Cases et al., 10 Phil. 386; 10 P. R. A. 189." (Francisco's Rules of Court, Vol. I, p. 794.)

If in the present case the parties agreed, as asserted by the appellee, to ask the court to render judgment on the pleadings, the plaintiff would be admitting all the material allegations of the answer, and the defendants would be admitting all the material allegations of the complaint. As the material allegations of one are contradictory to the material allegations of the other, what would become of such allegations?

Judgment on the pleadings would be possible if there were no contradictions between the material allegations in the pleadings. This does not happen in the present case.

If we apply this rule to the pleadings in this case, what would be left of the complaint and what would be left of the answer? Nothing. The judgment would be based on nothing.

The defendant contends that the oral testimony given by the witnesses for the plaintiff was not admissible, because she should have relied solely on the terms of the compromise agreement, Exhibit A. This contention is untenable for the following reasons:

It will be observed that the agreement was drafted by Sergeant of Police Elino Cristobal, a man who is not a lawyer and evidently not used to drafting documents. Although the document states that Agcaoili is the guarantor and the sergeant and the plaintiff testified that that was the understanding of the parties, yet, due to the sergeant's lack of ability in drafting documents properly, he must have thought that to make Agcaoili sign in the place for witnesses was just the same as making him sign elsewhere. However, the intention was clearly to make Agcaoili liable as guarantor. The testimony given by the witnesses of the plaintiff do not have the effect of changing the terms

of the written document, but simply to cure its formal defect. Section 61 of Rule 123 reads as follows:

"*Interpretation according to circumstances.*—For the proper construction of an instrument, the circumstances under which it was made, including the situation of the subject thereof and of the parties to it, may be shown, so that the judge may be placed in the position of those whose language he is to interpret."

That is exactly what the witnesses for the plaintiff did, that is, to clarify the defectively drafted Exhibit A. The placing of the signature of Agcaoili in the space for witnesses was a mere mistake of form.

The testimonial evidence for the plaintiff was not objected to on any ground nor did the defendants at the new trial ask for their striking out. It is true that at the first trial the defendants had no opportunity to make any objection, because they were not present; but they should have asked at the second trial for the striking out of the testimony if they believed it was not admissible. This they did not do. Section 5 of Rule 37 provides that "the recorded evidence taken upon the former trial so far as the same is material and competent to establish the issues, shall be used upon the new trial without retaking the same."

The claim of the defendants that it was the duty of the plaintiff to move the jeep to Lucena for repairs is contrary to the evidence and is unreasonable, for how could she move the damaged jeep that could not run; it was rather the duty of the defendant to haul the jeep to the place of repairs, using their running and undamaged truck.

In view of the foregoing, the judgment appealed from is reversed in so far as the defendant and appellee Maximiliano Agcaoili is concerned, who is hereby sentenced to pay the sum of ₱2,300 to the plaintiff, with legal interest from the filing of the complaint until paid, subsidiarily to Alfonso Ramos. With costs against the appellee. It is so ordered.

Felix and *De la Rosa, JJ.*, concur.

Judgment modiffied.

[No. 5042.-R. January 16, 1950]

MAXIMA ARANDA ET AL., petitioners, *vs.* GREGORIO DE LEON ET AL., respondents.[1]

PLEADINGS AND PRACTICE; RECORD ON APPEAL; GRAVE ABUSE OF DISCRETION IN DISAPPROVING RECORD ON APPEAL; CERTIORARI THE PROPER REMEDY.—Under the provisions of Sec. 7 of Rule 41

[1] See Resolution of the Supreme Court of March 10, 1950. Petition for certiorari is dismissed, the question of whether or not there has been abandonment of appeal being a question of fact falling under the discretion of the Court of Appeals.

of the Rules of Court, appellants *are not required* to urge the court to approve the record on appeal, although they could have done that instead of waiting for the court to comply with its duty. Anyway, under said section 7, the trial judge is, upon his own initiative, empowered to *direct the amendment* of the record on appeal, but nothing provided therein authorizes the court to deny the motion for the approval of a record on appeal just because it allowed a long time to elapse without acting on the same. Consequently, the act of the trial judge in taking this latter course without giving appellants an opportunity to explain the reasons of their failure to take any step towards the prosecution of their appeal, constitutes a grave abuse of discretion on his part, and under the provisions of section 1 of Rule 67, certiorari is the proper remedy.

ORIGINAL ACTION in the Court of Appeals. Certiorari.

The facts are stated in the opinion of the court.

Primicias, Abad, Mencias & Castillo and *Pedro C. Merrera* for petitioners.

Bonifacio T. Doria for respondents.

FELIX, *J.:*

On September 4, 1943, an action for partition of a certain property was filed in the Court of First Instance of Pangasinan, where it was docketed as civil case No. 124 of said court. The respondents herein, except Judge Pedro Villamor, were the plaintiffs and the petitioners herein the defendants, who claimed to be the exclusive owners of the property, having inherited the same from their father who in turn acquired it in January of 1951 from Ludovico de Leon and his wife Carlota Malicsa, by means of a donation *propter nuptias.*

After proper proceedings and hearing judgment was rendered in said case on November 9, 1944, holding plaintiff Gregorio de Leon owner of ¼ of the parcel of land described in the complaint; plaintiff Florentina de Leon owner of another ¼; plaintiffs Florentina Baniqued and Faustina Baniqued of another ¼; while the defendants were declared to be the owners of the remaining ¼. It was further held in the judgment that "if thirty days after this decision has become final the parties have not arrived at the partition of the property, the court will appoint commissioners on partition." No pronouncement was made as to costs.

Against this decision, copy of which was served on the defendants on October 24, 1944, the latter filed on the following day, a motion for new trial which was denied by the court on October 31, 1944, and the copy of the order received by the defendants on December 10, 1944.

Not being satisfied with the outcome of the case, on *January 3, 1945,* the defendants filed the notice of appeal and the record on appeal and deposited with the clerk of court the amount of ₱60 as appeal bond. However, by

reason of the bombardment by the American liberating forces of the municipality of Lingayen, where the Court of First Instance of Pangasinan was located, on *January 9, 1945*, a part of the court building was destroyed and some of the records, among which were parts of the records of said civil case No. 124 were likewise destroyed, for which reason no further action on the aforementioned record on appeal could be taken.

On *June 18, 1946*, the defendants-appellants were given a period of 10 days within which to reconstitute the missing records, and in compliance with the order of the court issued to that effect, they filed in due time a motion for the reconstitution of the missing records of said civil case No. 124, and by order of *November 26, 1946*, the same were declared to have been reconstituted. On *December 26, 1946*, defendants-appellants filed a motion for the approval of the record on appeal and prayed the court to direct the clerk thereof to send to the appellate court the record on appeal together with all the oral and documentary evidence submitted in said case. Said motion was set for hearing on April 12, 1948, but by reason of the absence of the judge presiding the branch where the record on appeal was to be considered, no hearing was held on that day.

On *August 10, 1949*, the respondent Judge Pedro Villamor, at his own initiative and without any motion or petition to dismiss the appeal, issued an order denying the motion for the approval of the record on appeal, not because it was objected to by plaintiffs, but because, according to the judge "appellants have shown no interest in the prosecution of the case." Appellants received a copy of this order on August 13, 1949, and filed on the same day a motion for reconsideration which the court denied by order of September 16, 1949, which appellants received on September 21, 1949.

In view of these facts, and desirous of prosecuting their appeal, on *October 10, 1949*, the defendants in said case instituted in this Court of Appeals the present action of certiorari with mandamus praying that:

"The Clerk of the Court of First Instance of Pangasinan (be required) to certify to this court a copy of the record on appeal in the above-mentioned case, as well as the motion of the petitioners dated December 26, 1947, and the orders of the court dated August 10, 1949, and September 16, 1949, so that the same may be reviewed by this Honorable Court, and that after hearing the parties, a judgment be rendered declaring the aforementioned order null and void and directing the respondent judge to approve the record on appeal and have the same forwarded to this Honorable Court for further proceedings. The petitioners further pray for any other relief as in the opinion of the court the petitioners are justly and equitably entitled, with costs against the respondents."

In the respective answers filed by the respondents, they practically admit all the facts on which the petition is based, and the only questions at issue in this case are (1) whether under the circumstances of the same, the petitioners were guilty of laches and were properly deprived of their right of appeal; and (2) whether the issuance of a writ of certiorari with mandamus is the adequate remedy that lies in this case.

It will be noticed that there is no question that the petitioners as defendants-appellants in said case, filed on time a notice of appeal and the record on appeal and further deposited the appeal bond of ₱60; that due to the chaotic conditions then predominant at Lingayen where the American liberating forces landed on January 9, 1945, the record on appeal was not set for hearing and approved by the court; that the records of said civil case No. 124 were destroyed and had to be reconstituted before the record on appeal could be approved; and that the hearing for the approval of the record on appeal after the reconstitution of said records, which was set for April 12, 1948, never took place not by reason of any fault of the parties, but because there was no judge presiding over the branch where the record on appeal was to be acted upon. Such being the case, were the petitioners, defendants-appellants therein, guilty of laches because up to August 10, 1949, they had failed to take any step towards prosecuting their appeal? Section 7, Rule 41 of the Rules of Court, provides:

"SEC. 7. HEARING AND APPROVAL OF RECORD.—Upon the submission for approval of the record on appeal, *if no objection is filed within 5 days, the trial judge may approve it as presented* or, upon his own motion or at the instance of the appellee, may direct its amendment by the inclusion of any matters omitted which are deemed essential to the determination of the issue of law or fact involved in the appeal. If the trial judge orders the amendment of the record, the appellant, within the time limited in the order, or such extension thereof as may be granted, shall redraft the record by including therein, in their proper chronological sequence, such additional matters as the court may have directed him to incorporate, and shall thereupon submit the redrafted record for approval upon notice to the appellee, in like manner as the original draft."

In the lower court no objection was ever filed by appellees against the approval of the record on appeal as reconstituted, and the appellants could rightly assume that the court would approve said record, specially when the appellees had not registered any objection to such action. Under the aforequoted provisions of the Rules of Court, appellants *are not required* to urge the court to approve the record on appeal, although they could have done that instead of waiting for the court to comply with its duty. Anyway, under said section 7, the trial judge is, upon his own initiative, empowered to *direct the amendment* of the record on appeal, but nothing provided therein author-

izes the court to deny the motion for the approval of a record on appeal just because it allowed a long time to elapse without acting on the same. Consequently, the act of the trial judge in taking this latter course without giving appellants an opportunity to explain the reasons of their failure to take any step towards the prosecution of their appeal, constitutes a grave abuse of discretion on his part.

With regard to the adequacy of the remedy sought for by the petitioners in this case, section 1, Rule 67 of the Rules of Court, provides:

"SEC. 1. PETITION FOR CERTIORARY.—When any tribuanl, board, or other exercising judicial functions, has acted without or in excess of its or his jurisdiction, *or with grave abuse of discretion* and there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court alleging the facts with certainty and praying that judgment be rendered annuling or modifying the proceedings of such tribunal, board or officer as the law requires, with costs."

The trial judge in the case under consideration acted within the scope of his jurisdiction, but in view of the opinion held in disposing of the first question at issue, that the trial judge acted *with grave abuse of discretion*, we have to conclude, and thus hold, that the remedy applied for in the petition is, under the provisions of the above quoted section 1 of Rule 67, the proper remedy.

Wherefore, as prayed for, we hereby annul and leave without force and effect the orders of the respondent judge of August 10 and September 16, 1949. We further order the corresponding Judge of the Court of First Instance of Pangasinan to pass upon the correctness of the record on appeal, as submitted and reconstituted, and if it were found to contain all the pleadings and matters necessary for the proper determination of the issues on appeal, to approve the same, giving defendant's appeal due course. Without pronouncement as to costs. It is so ordered.

Jugo, Pres. J., and *De la Rosa, J.*, concur.

Petition granted with instruction.

[No. 3906–R. January 17, 1950]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* KONG LEON *alias* KIM HUY, defendant and appellant.

1. CRIMINAL LAW; COUNTERFEITING OF FOREIGN COIN; ACT PUNISHABLE ALTHOUGH THE SAID COIN IS WITHDRAWN FROM CIRCULATION; ART. 163, REVISED PENAL CODE; REASON FOR THE LAW.—If under articles 296 and 297 if the Spanish Penal Code of 1870 from which the law punishing the fabrication and uttering of counterfeit coins (article 163, Revised Penal Code) is evidently derived, the fabrication of a local (Spanish) coin withdrawn

from circulation is punishable, it stands to reason that the counterfeiting of foreign coin, even if withdrawn from circulation in the foreign country of its origin, should also be punishable, because the reason for punishing the fabrication of a local coin withdrawn from circulation is not alone the harm caused to the public by the fact that it may go into circulation, but the danger that a counterfeiter produces by his stay in the country, and the possibility that he may later apply his trade to making of coins in actual circulation. (See 4 Viada, pp. 23–26.)

2. ID.; ID.; EVIDENCE; JUDICIAL NOTICE OF ACTS OF U. S. CONGRESS RELATING TO CURRENCY.—Since article 163, paragraph 3, of the Revised Penal Code punishes the fabrication or utterance of counterfeited coin, which is "currency of a foreign country", the legal duty of the court to enforce and apply the said penal provision in a case for counterfeiting U. S. gold dollar coins, gives it the corresponding authority and obligation to take judicial notice of the acts of the Congress of the United States and the executive orders and departmental regulations relating to the currency of said country. The principle has already been laid down by our Supreme Court in the case of U. S. *vs.* Clemente, 24, Phil., 178, with respect to municipal ordinances, and we believe that its application to a foreign law, instead of a municipal ordinance, is the same, for, paraphrasing the decision of our Supreme Court in that case, the law of the United States on its currency became a part of the general law (article 163, paragraph 3, Revised Penal Code), which our courts of justice are bound to apply and enforce.

3. FOREIGN LAWS; U. S. GOLD RESERVE ACT OF 1934; EFFECT OF THE LAW.—A study of the provisions of the United States Gold Reserve Act of 1934 discloses that their effect is to withdraw United States gold coins from circulation, although there is no intent to outlaw their use and possession under rules and regulations that may be promulgated therefor. (United States Statutes at Large, Vol. 48, Part 1, pp. 337–340; Farber *vs.* United States, 114, Fed., (2d) 5, 7, 8.)

APPEAL from a judgment of the Court of First Instance of Manila. Natividad, J.

The facts are stated in the opinion of the court.

Leonardo G. Marquez for appellant.

Assistant Solicitor General Ruperto Kapunan, Jr. and *Solicitor Adolfo Brillantes* for appellee.

LABRADOR, *J.:*

The accused-appellant herein is a goldsmith with a shop at No. 622 Bambang Street, City of Manila, established after liberation and long before April 27, 1947. Prior to this date the police had received information from Moro Arais Mansu that appellant was selling illegally fabricated United States gold dollar coins. So on that day the police, headed by Lt. Vicente Verzosa and duly provided with a search warrant, proceeded to search appellant's shop and person. Before the search Lieutenant Verzosa had sent ahead Moro Mansu to pretend buying dollar coins from appellant. In fact, when the police reached appellant's place at about half past four in the afternoon of April 27,

1947, Moro Arais Mansu was in the kitchen of appellant's place talking with the latter.

The place searched was a veritable goldsmith shop. One work table was in public view, and another was in a small room which had a shingle with the following inscription: "Fitting Room." This room was originally occupied by a Chinese tailor, who had gone to China three months before. After he left, the room was occupied by a Filipino tailor, but who was no longer using the room or the place outside, although there were manikins still outside of said fitting room. As the police searched the shop, they found goldsmith tools on the table inside the fitting room (t. s. n., p. 20), namely, a balance, a box containing a hammer, file etc., a hand saw, a piece of metal, a small bottle, a small bottle of mercury, an anvil, a hand vise, one set of weights, galvanized iron tubes, a jeweler's anvil, a blower, some Filipino coins, and a box with pieces of gold with false stones (Exhibits A, B, C, D, E, F, G, H, I, J, K, L, M, N, and O).

The search was not made of No. 622 Bambang Street alone, but also of No. 566, because the police suspected that it was in this store and through its keepers that the appellant effected the sales of his illegally fabricated coins. Nothing material, however, was found in these premises, and the store owners or keepers, although brought to the police station for investigation, were not indicted.

Among the articles found in the table inside the "Fitting Room," aside from the goldsmith implements already set forth above as Exhibits A to O, the police also found a gold foil (Exhibit P), a gold nagget (Exhibit G), 15 one-centavo pieces (Exhibit R), a French gold coin, ten five-dollar American gold coins with pins and one without pin (Exhibit T), one unfinished five-dollar coin (Exhibit U), 2 unfinished ten-dollar U. S. gold coins (Exhibit V). According to Lieutenant Verzosa, he also searched the person of the appellant and found in the latter's pocket eight pieces of twenty-dollar U. S. gold coins wrapped in paper (Exhibit W). All of these articles were seized by the police and brought to the station, with the appellant and the two Chinamen at 566 Bambang.

At the police station appellant was subjected to questioning, through Justo Chan Lu Cuy, a Chinese interpreter, a member of the police department of the city. The questions propounded to appellant through said interpreter and his answer thereto were taken down in writing. After the investigation the appellant signed the statement in the presence of the police and the interpreter, both of whom signed as witnesses. This statement was presented at the trial as Exhibit Y, and in it appellant expressly admits having fabricated the eight pieces of finished dollar coins, the unfinished five-dollar and the two unfinished ten-

dollar pieces (Yaon walong pirasong dollar na yari, dalawang (10 dollar) na hindi pa yari at isang pirasong (5-dollar) na hindi pa yari, ay gawa ko).

The gold pieces, naggets, and coins were referred to a chemist of the Manila Police Department. He found that most of the gold dollar coins were genuine, but the unfinished coin marked Exhibit U, the two unfinished ten-dollar gold coins marked Exhibit V, and the eight twenty-dollar coins wrapped in paper and marked Exhibit W were all counterfeit, not being legitimate coins of the United States as they seem to be. According to the chemist, genuine gold coins are produced by impression, but the said coins (marked Exhibits U, V, and W, and identified as Exhibits 4, 5, and 2, respectively, in the Chemist's Report) were not so fabricated, but by the use of molds and then filed away, marks of filing at the edges were seen through the use of stereoscope. He also determined their gold content by their specific gravity, and he found that they were only 16 to 17 karats, whereas genuine U. S. gold dollars are 18 karats.

Appellant admitted that the goldsmith parapharnelia were his, and that the genuine coins also belonged to him, and that they were taken from the drawers of his table. But he denied ownership of the unfinished gold coins, Exhibits U and V, or of the eight pieces of finished twenty-dollar U. S. gold coins, or that the latter were found in his person. He claimed that he occupied only a space of one by three meters square in front of the store, and that he never went inside the fitting room. In support of his claim that the eight gold coins were not found in his person, Detective Benito Maloles, one of those who accompanied Lieutenant Verzosa in the search, declared that when the latter searched the person of appellant, he was in front, and that the eight pieces were not then found in appellant's person. Another witness corroborated his testimony in this respect, one Romy Lacorte, the wife of a Chinaman who was living near the appellant's shop.

On the basis of the above evidence the Court of First Instance of Manila declared appellant guilty of a violation of article 163, paragraph 3, of the Revised Penal Code, and sentenced him to an indeterminate sentence of not less than two (2) months of *arresto mayor*, nor more than one (1) year, one (1) month, and eleven (11) days of *prisión correccional*, to the accessory penalties provided by law, to a fine of ₱500, with subsidiary imprisonment in case of insolvency, and to pay the costs. Against this judgment appellant has prosecuted this appeal, assigning the following errors in his brief:

"1. The lower court erred in entertaining and admitting in evidence appellant's written admission of guilt, marked as affidavit Y, over and above the objection interposed by counsel for the defense.

"2. The lower court erred in finding that (1) Exhibit W was found in the pocket of appellant and (2) that Exhibits U, V, and other coins were found in the tailor's fitting room at 622 Bambang Street, Manila; which finding was based upon the uncorroborated, intrinsically weak and doubtful testimony of Lieutenant Verzoza.

"3. The lower court erred in finding and holding that the five coins in question hereby belonged to appellant; that he manufactured some of them; that said coins were sold by him in a store at 622 Bambang Street, Manila.

"4. The lower court erred in not holding that the disputed coins were not proven to be counterfeit, beyond reasonable doubt.

"5. The lower court erred in not holding that appellant can not be held liable and punishable under the legal provision relied upon, paragraph 3, article 163 of the Revised Penal Code; and in not dismissing outright this case.

"6. The lower court erred in not acquitting the appellant upon ground of reasonable doubt on the question of facts, and/or in not dismissing this case outright of the question of law."

The claim made in appellant's first assignment to the effect that appellant's written statement, Exhibit Y, was improperly admitted because it is hearsay, is without merit. Said statement was made and was signed by appellant himself, in answer to questions propounded to him, and constitutes a confession as defined in section 14 of Rule 123 of the Rules of Court. The interpreter is not the one who made the statements; it was appellant himself, through interpretation. The case of U. S. *vs.* Chu Chia, 6 Phil., 260, refers to a supposed confession made to an interpreter, which is testified to by another witness, not the interpreter. It is evident that in this case the testimony is hearsay. Appellant's statement, however, is in writing and is signed by him; it certainly is not hearsay, but his own confession.

In appellant's second assignment of error it is claimed that the testimony of Lieutenant Verzosa that he found the eight pieces of ten-dollar gold coins, Exhibit W, should not be believed because it is contradicted by those of the witnesses for the defense, and because it is immoral to admit the same, the transaction relating thereto having been induced by said lieutenant, and that his testimony as to the others, Exhibits U and V, should neither be believed under the principle of *falsus in uno falsus in omnibus*. It is not true that there is nothing in the record to corroborate Lieutenant Verzosa's testimony that he found the eight pieces of gold coins in appellant's pocket; in the confession of the appellant, Exhibit Y, he expressly admits that he made them (*supra*). On the other hand, the testimony of Detective Maloles is not clear. Thus he said:

The Fiscal:

Q. And the eight pieces of 10-dollar U. S. gold coins which, you said were found in a box outside the tailor fitting room?--A. There is misunderstanding, because it is not eight pieces that were found in the room but two pieces were found outside at 566 Bambang in the boxes of Kong Leong.

"Q. What were those found in a box outside?—A. In the drawer.
"Q. What were those?—A. The eight pieces of gold; two pieces were taken from outside." (T. s. n., pp. 40–41, session of June 15, 1948.)

So that Detective Maloles believes that the eight ten-dollar gold coins were taken from appellant's shop. Assuming, therefore, that Lieutenant Verzosa's testimony is incorrect, in so far as the place where the eight ten-dollar pieces were found, that does not mean that they were not found in the possession of appellant, as the latter had admitted and Detective Maloles asserted. The discrepancy is immaterial because appellant had possession and control thereof anyway.

The contention that Lieutenant Verzosa's testimony is immoral under the principle contained in People *vs.* Abella, 46 Phil., 857, does not lie in the case at bar. Lieutenant Verzosa had ordered Moro Arais Mansu to pretend to buy U. S. gold coins from the appellant, not to induce appellant to counterfeit them and then sell them to him. Moro Arais Mansu was supposed to buy legitimate coins, and appellant was expected to bring out his counterfeit coins instead. There was, therefore, no inducement to commit an offense. It was a simple trick to catch the appellant in *flagrante.*

In appellant's third assignment of error it is argued that there was no proof that he owned the fitting room, or that he manufactured the gold coins in question. Lieutenant Verzosa testified that all the goldsmith implements were found on a table in the fitting room (t. s. n., pp. 15, 20). At the time of the investigation appellant admitted the room to be his (Ibid., p. 15). He also admits ownership of the implements found on the table in this room, and they could not have been anybody else's because the tailor was no longer occupying the room, and because the implements were those of a goldsmith and not of a tailor. No one in said premises was a goldsmith but appellant. To our mind the above circumstantial evidence proves beyond peradventure of a doubt that the room was appellant's and the parapharnelia found therein, together with the unfinished coins, Exhibits U and V, also found therein, are his.

Neither can the argument that there was no proof that the fake coins were fabricated by appellant be given any weight whatever. Again, the circumstantial evidence proves the fact beyond any dispute. Appellant was a goldsmith by profession. He had a shop and all the implements and materials used in the trade. The making of coins is something entirely within the scope of his knowledge and ability. The counterfeit coins were found in his working table. He admitted having made them in his statement before the police (Exhibit Y). All these

also constitute proof beyond reasonable doubt that he made the counterfeit coins. It is not necessary that somebody testify to having seen appellant fabricating coins. The above circumstances, in the absence of a satisfactory explanation on his part as to how he came into possession of the coins, show beyond doubt that he did fabricate them, in the same manner that the unexplained possession of recently stolen articles proves that thereof.

The fifth assignment of error raises the legal contention that gold coins have ceased to be a currency of the United States by the operation of the provisions of the United States Gold Reserve Act of 1934, and that the appellant may not, therefore, be considered guilty of a violation of article 163, paragraph 3, of the Revised Penal Code. The learned judge of the trial court held that the provisions of the said Act of the Congress of the United States, known as the Gold Reserve Act of 1934 (G. R. 6976, Public, No. 87), only withdraw gold coins from circulation temporarily, but did not declare them as illegal or valueless, or no longer currency or legal tender. The Solicitor General, in support of the judgment of conviction, argues that only the circulation of gold coins was suspended, as may be seen from the title of the Act.

No evidence was admitted in the course of the trial in the court below as to the United States statute in question, and ordinarily we may not take judicial cognizance thereof. In view of the fact, however, that article 163, paragraph 3, of the Revised Penal Code punishes the fabrication or utterance of counterfeited coin, which is "currency of a foreign country," our legal duty to enforce and apply the said penal provision gives us the corresponding authority and obligation to take judicial notice of the acts of the Congress of the United States and the executive orders and departmental regulations relating to the currency of said country. The use of the term "foreign currency" in the penal statute, in order to be applied and enforced in this jurisdiction, requires us to know the laws of the foreign country to determine what the currency is. The principle has already been laid down by our Supreme Court in the case of U. S. *vs.* Clemente, 24 Phil., 178, with respect to municipal ordinances, and we believe that its application to a foreign law, instead of a municipal ordinance, is the same, for, paraphrasing the decision of our Supreme Court in that case, the law of the United States on its currency became a part of the general law (article 163), paragraph 3, Revised Penal Code), which our courts of justice are bound to apply and enforce.

A study of the provisions of the United States Gold Reserve Act of 1934 discloses that their effect is to withdraw United States gold coins from circulation, although

there is no intent to outlaw their use and possession under rules and regulations that may be promulgated therefor. This may be inferred from the following provisions of the said Act:

AN ACT TO PROTECT THE CURRENCY SYSTEM OF THE UNITED STATES, TO PROVIDE FOR THE BETTER USE OF THE MONETARY GOLD STOCK OF THE UNITED STATES, AND FOR OTHER PURPOSES.

"* * *

"SEC. 2. (*a*) Upon the approval of this Act all right, title, and interest, and every claim of the Federal Reserve Board, of every Federal Reserve bank, and of every Federal Reserve agent, in and to any and all gold coin and gold bullion shall pass to and are hereby vested in the United States; * * * All gold so transferred, not in the possession of the United States, shall be held in custody for the United States and delivered upon the order of the Secretary of the Treasury; and the Federal Reserve board, the Federal Reserve banks, and the Federal Reserve agent shall give such instructions and shall take such action as may be necessary to assure that such gold shall be so held and delivered.

"* * *

"SEC. 3. The Secretary of the Treasury shall, by regulations issued hereunder, with the approval of the President, prescribe the conditions under which gold may be acquired and held, transported, melted or treated imported, exported, or earmarked: (*a*) for industrial, professional, and artistic use; (*b*) by the Federal Reserve banks for the purpose of settling international balances; and (*c*) for such other purposes as in his judgment are not inconsistent with the purposes of this Act. Gold in any form may be acquired, transported, melted or treated, imported, exported, or earmarked or held in custody for foreign or domestic account (except on behalf of the United States) only to the extent permitted by, and subject to the conditions prescribed in, or pursuant to, such regulations. Such regulations may exempt from the provisions of this section, in whole or in part, gold situated in the Philippine Islands or other places beyond the limits of the continental United States.

"SEC. 4. Any gold withheld, acquired, transported, melted or treated, imported, exported, or earmarked or held in custody in violation of this Act or of any regulation issued hereunder, or licenses issued pursuant thereto shall be forfeited to the United States, and may be seized and condemned by like proceedings, as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law; and in addition any person failing to comply with the provisions of this Act or of any regulations or licenses, shall be subject to a penalty equal to twice the value of the gold in respect of which such failure occurred.

"SEC. 5. No gold shall hereafter be coined, and no gold coin shall hereafter be paid out or delivered by the United States: *Provided, however,* That coinage may continue to be executed by the mints of the United States for foreign countries in accordance with the Act of January 29, 1874 (U. S. C., title 31, sec. 367). All gold coin of the United States shall be withdrawn from circulation, and, together with all other gold owned by the United States, shall be formed into bars of such weights and degrees of finances as the Secretary of the Treasury may direct. * * * (United States Statutes At Large, Vol. 48, Part I, pp. 337–340.)

In accordance with the provisions of section 3 of the Act above-quoted, the President issued Executive Order No. 6260, which expressly provides:

"No person other than a Federal Reserve bank shall after the date of this order acquire in the United States any gold coin * * * except under licenses therefor issued pursuant to this executive order, provided * * * that collectors of rare and unusual coin may acquire from one another and hold without necessity of obtaining a license therefor gold coin having a recognized special value to collectors of rare and unusual coin * * *" (Parker *vs.* United States, 114 Fed. (2d) 5, 7.)

And the Secretary of the United States Treasury, under the President's approval, issued the following order:

SEC. 20. Rare Coin. Gold coin of recognized special value to collectors of rare and unusual coin * * * may be acquired and held * * * without the necessity of holding a license therefor. (Ibid., p. 8.)

In accordance with the above regulations, therefore, gold coins of the United States may be possessed or acquired and transferred from one another without necessity of obtaining a license therefor, because they have a recognized special value to collectors of rare and unusual coins.

The appellant claims that inasmuch as gold coins have been withdrawn from circulation, they have ceased to be a currency of the United States, within the meaning of article 163, paragraph 3, of the Revised Penal Code. The Solicitor General, in reply, argues that the penal provision in question punishes counterfeiting of coins, whether or not the same are in circulation.

The law punishing the fabrication and uttering of counterfeit coins (article 163, Revised Penal Code) is evidently derived from articles 296 and 297 of the Spanish Penal Code of 1878, which are as follows:

"ART. 296. El que fabricare moneda falsa del valor de la legitima, imitando moneda que tenga curso legal es el Reino, cesa castigado con las penas de presidio correccional en sus grados medio y maximo y multa de 250 a 2.500 pesetas.

"ART. 297. El que fabricare moneda falsa imitando moneda que no tenga curso legal en el Reino sera castigado con las penas de presidio correccional en sus grados medio y maximo y multa de 125 a 1.250 pesetas."

When the Revised Penal Code was enacted, the Spanish text was the one approved by the Legislative and, therefore it is the one that controls in the interpretation of its provisions (People *vs.* Mamaba, 58 Phil., 665). The text of the provision now in question in Spanish is as follows:

"* * *

"3.º Con prisión correccional en su grado minimo y multa que no exceda de 1,000 pesos, si la moneda falsificada fuera de un pais extranjero."

It will be noted that whereas the Spanish text upon the clause "si la moneda falsificada fuere de un pais extranjero," this has been rendered into English as follows:

"* * * if the counterfeited coin be currency of a foreign country." It is evident that the term "moneda" in the Spanish text has been translated into "currency" (not coin). The question that bluntly presents itself for resolution, therefore, is: Did the Legislature intend to punish the fabrication of a foreign coin, even if such foreign coin has been withdrawn from circulation in the country to which it belongs?

A local author maintains the view that under article 163 of the Revised Penal Code it is an essential element of the offense that the coin fabricated be legal tender or currency, for the reason that its purpose is to protect the public confidence and faith therein, and that no interest is injured in the fabrication of coins withdrawn from circulation (Albert on the Revised Penal Code, p. 381). But Groizard, in commenting on articles 297 and 298 of the Spanish Code of 1870, states that the coins that are the subject of the said articles *may be former coins which had been withdrawn by the State*, or foreign coins which have not been authorized as currency in the Kingdom, although they may have been used and circulated by the lacit consent of private individuals.

"* * *

Monedas que no tengan curso legal en el Reino, lo mismo pueden ser aquelles *que, habiendose usado antes, fueron recogidas por el* Gobierno, o las que pertenecen a Estados extranjeros, que no han sido admitidas en el Reino con curso legal, por mas que sea bien frecuente el caso de su uso y circulacion por el tacito consentimiento de los individuos. * * *." (Groizard, Vol. III, p. 846; Italics ours.)

If under articles 296 and 297 of the Spanish Penal Code of 1878 the fabrication of a local (Spanish) coin withdrawn from circulation is punishable, it stands to reason that the counterfeiting of such foreign coin, even if withdrawn from circulation in the foreign country of its origin, should also be punishable, because the reason for punishing the fabrication of a local coin withdrawn from circulation is not alone the harm caused to the public by the fact that it may go into circulation, but the danger that a counterfeiter produces by his stay in the country, and the possibility that he may later apply his trade to the making of coins in actual circulation. Thus, Viada states this reason:

"Eunimos bajo un mismo comentario estos dos articulos por referirse uso y otro a la falsificacion de la moneda extranjera que no tiene curso legal en España; a la fabricacion el primero; al cercenamiento el segundo.

La fabricacion de esta clase de moneda ha de ser muy poco comum, porque no teniendo salida en el Reino, es claro que ha de haber menos incentivo o interes para dedicarse a ella; mas como quiera que el mal material cansado por el delito no es el fundamento unico se la pena, para cuya determinacion ha de tener tambien presente el legislador el mal moral que por aquel se produsca, de ahi que la falsificacion de la moneda, aunque sea extranjera y no

admitido su curso en España, ha de constituir siempre un delito, tanto aun cuanto que el monedero falso, aunque lo sea de moneda extranjera, no deja de ser un huesped peligroso para el pais, por ser muy facil que venga a convertirse tarde o temprano en falsificador de moneda española.

"Asi no explica por que se castiga en este art. 297 la fabricacion de la moneda de esta clase con el *presidio correccional en sus grados medio y maximo y multa de* 125 *a* 1.250 *pesetas*, pena que debera aplicarse al culpable indistintamente, era sea el valor de la moneda falsificada igual a la legitima, ora sea inferior a esta, pues que el articulo no establece entre ambos casos distinción alguna." (4 Viada, 25–26.)

We have not lost sight of the fact that the prevailing rule in the United States and in England is that counterfeiting of currency withdrawn from circulation is not punishable.

"The counterfeiting of coin or bank notes which are not current is not an offense. (15 C. J., 359.)

"* * *. Ordinarily it is not an offense to pass counterfeit of coin, bank bills, or other obligations, the genuine of which are not current as money by law and usage, or which were not current at the time they were made. * * * (29 C. J. B. 727.)

"The paffing (passing) of counterfeit bills the currency of which is prohibited, is not an offense against the statute. (Rex *vs.* Humphrey, 1 Root [Coun.] 53.)

"The Supreme Court of the States of New York, in the case of People *vs.* Wilson, 6 Johnson's M. 320, under a similar statute to ours, say, that 'It cannot therefore be felony to utter and publish in this state, such a forged bill; because no person can be defrauded, as every person is bound to know, that it is unlawful to accept in payment, or circulate such a bill. The fraudulent intent is the gist of the charge, and that intent cannot be inferred from uttering the bill, when every person knows that it is unlawful to receive it, and that it is void as to the purposes of payment and cirlation. The opinion of all the judges in England in Maffit's Case, Leach, 337, was that the forging of a bill of exchange, which if real would not have been valid or negotiable, but void under the statute, was not a capital offense.'

"The principle of that case was again recognized by the same court in the case of the People *vs.* Nathorn, 21 Wend. 581. And the case of Rex *vs.* Maffit, 2 Leach 403, above referred to, seems to be the leading case on this question. And it is believed that it has been recognized as the law, by the courts generally both in this country and Great Britain, whenever the question has been presented for adjudication. * * *. (Gutchins *vs.* People, 21 Ill. 641, 644.)

Evidently the reason of the law in said jurisdictions is that no person is defrauded if the coin is not in circulation.

In the case at bar collectors were to be defrauded, as it was apparent by the imitation of the U. S. gold dollars fabricated by appellant that they were to be passed to Moros who value them even as relics or rare objects. Be that as it may, the reason for applying the law to coins even if withdrawn from circulation, as given by Viada, i. e., the possibility and probability that the counterfeiter will use his trade for the fabrication of coins in circulation, has not been shown to have ceased to exist. As the

reason and policy of the law from which the provision in question (article 163, paragraph 3, Revised Penal Code) was derived still obtains, there being no legal provision to the contrary or reason for implying the contrary, we are constrained to hold, as we hereby hold, that the making of a false coin of a foreign country is punishable under article 163, paragraph 3, of the Revised Penal Code, even if said country has withdrawn the coin from circulation therein.

Wherefore, we find the judgment appealed from to be in accordance with the law and the evidence, and we hereby affirm it, with costs against the appellant. So ordered.

De la Rosa and *Paredes, JJ.*, concur.

Judgment affirmed.

[No. 3323-R. January 18, 1950]

MARGARITA CARNAJE, plaintiff and appellee, *vs.* TOMAS MAGNO, defendant and appellant

EVIDENCE; COURT MAY GIVE WEIGHT TO DOCUMENTS REJECTED BY IT; WHEN SUCH ACT CONSTITUTES REVERSIBLE ERROR; CASE AT BAR.—Error is alleged to have been committed by the lower court in giving weight to Exhibit A, which was rejected by said court, and in finding that the amount therein stated had been paid. In accordance with the doctrine laid down in the case (Larrobis contra Wislizenus, 43 Jur. Fil., 421), such act of the lower court does not constitute a reversible error. It should have been a reversible error had appellant shown that by the rejection of said Exhibit A, when offered as evidence by the plaintiff, he had been deprived of the chance of disproving not only the contents of said exhibit but also its execution. Appellant does not claim having been prejudiced by the court in giving weight to said exhibit after rejecting the same. As against Exhibit A, the only evidence presented by appellant is his testimony to the effect that he does not know said document because he does not know how to read.

APPEAL from a judgment of the Court of First Instance of Iloilo. Blanco, J.

The facts are stated in the opinion of the court.

Felix V. Macalalang for appellant.
Venancio Bañares for appellee.

RODAS, *J.:*

Tomas Magno has appealed from the decision of the Court of First Instance of Iloilo sentencing him to deliver 600 *bultos* of palay or their value at the time payment thereof was due, plus 150 *bultos* from the time of the harvest in 1948 and every year thereafter on the following assignments of error:

I

"The lower court erred in giving weight in the decision to Exhibit A, the admission of which it denied and in finding that the amount therein stated had been paid.

II

"The lower court erred in finding that the land in question is not the same land claimed by the appellant and in not finding that the land is situated between the barrios of Maiñguit and Manaolan, municipality of Janiuay, province of Iloilo.

III

"The lower court erred in finding that appellant, in his failure to present the tax declaration, hid the fact that Exhibits 1–16 refer to a different parcel of land and in not finding that these exhibits refer to the land under litigation.

IV

"The lower court erred in declaring the appellee owner of the land and ordering the appellant to give its possession to the appellee."

Plaintiff-appellee and her husband sometime in April, 1943, then residing in Janiuay, Iloilo, as an incident of the war, evacuated to the municipality of Lambunod; of the same province, and upon their return three weeks after, found defendant-appellant in possession of the land in question. The reason given by the latter was that he believed the plaintiff was not returning. When asked to vacate he requested the latter to allow him to continue the work he had already began, promising to give her one-half of the harvest he might gather. He, however, failed to live up to his promise, thus compelling plaintiff to resort to court immediately after liberation in order to recover the land and her share in the products thereof. In support of her contention, he produced evidence to the effect that said land was owned by her grandfather, Francisco Carnaje and passed it upon his demise unto his son Federico, her father, and she in turn inherited it upon the latter's death, or shortly after the Japanese occupation. In 1917 Francisco mortgaged the land to Lorenzo Magno, defendant's predecessor, for ₱200 and redeemed it in 1920 with the money he secured through loan from Teodorico Ravenera who held, until he was repaid said sum for a period of three years, the deed of mortgage (Exhibit A) which was returned by Lorenzo Magno to Francisco Carnaje after writing on the face of the two pages of which it consists the word "pagado".

Defendant-appellant in turn tried to establish that said land was possessed by his father, as owner, for ten years prior to his death which took place in 1926 when it was inherited by him by virtue of the document, Exhibit 18, and since then has been paying the corresponding land taxes as shown by Exhibits 1–16 and possessed it, in the same concept, peacefully, until he was sued by the herein appellee. No claims that the corresponding tax declaration was lost in possession of his attorney during the war together with the official receipts showing payment of land taxes for the years 1941 and 1942. Said attorney testified that, as an assistant attorney in the law

office of his brother, he had been in charge of an ejectment case against the herein defendant wherein Francisco Carnaje was the plaintiff and his client, the defendant, and that said case was decided in the latter's favor.

The parcel of land in question is known as lot No. 2660 of Janiuay cadastre, cadastral case No. 88, in which Francisco Carnaje filed his answer claiming ownership thereof on December 11, 1934 and contested by Tomas Magno who filed his answer on December 26, 1934.

Error is alleged to have been committed by the lower court in giving weight to Exhibit A, which was rejected by said court, and in finding that the amount therein stated had been paid. In accordance with the doctrine laid down in the case (Larrobis *contra* Wislizenus, 43 Jur. Fil., 421) quoted by counsel for appellee such act of the lower court does not constitute a reversible error. It should have been a reversible error had appellant shown that by the rejection of said Exhibit A, when offered as evidence by the plaintiff, he had been deprived of the chance of disproving not only the contents of said exhibit but also its execution. Appellant does not claim having been prejudiced by the court in giving weight to said exhibit after rejecting the same. As against Exhibit A, the only evidence presented by appellant is his testimony to the effect that he does not know said document because he does not known how to read.

With regard to Exhibit A, it should be stated that the testimony of the appellant himself with respect to the time his father began possessing said land apparently tallies with the date of execution of said document and its contents. Appellant testified that his father began to possess the land in question ten years prior to his death. Exhibit A, which is a sale with *pacto de retro*, was executed on April 30, 1917 in favor of Lorenzo Magno who died, according to the appellant, in 1926, or nearly ten years after the execution of said document. Appellant's claim of ownership is based obviously on the contents of said document. It is also alleged that the redemption of the land from defendant's father is suspicious, because the word "pagado" written on the two pages of said Exhibit A was written in pencil. Even without the word "pagado" written on the face of the two pages of said exhibit, the mere possession by the plaintiff of the document in question shows that the obligation therein contained has been duly paid by the seller and hence the redemption which the court found to have been made is supported by the evidence.

The evidence as to the possession of the land during the lifetime of the contract of sale with *pacto de retro*, according to said contract, should have been held by the buyer, Lorenzo Magno, whereas the evidence produced by

the plaintiff showed that said possession was held during said time by her predecessor in interest Francisco Carnaje. It should be noted that the possession of the entire land was not given to Lorenzo Magno but only a portion thereof at the time of the execution of said deed. The testimony of the witnesses for the plaintiff was, therefore, partly correct.

It is alleged that the lower court again committed an error in finding that the land in question is not the same land claimed by the appellant, and in not finding that the land is situated between the barrios of Mainguit and Manaolan, municipality of Janiuay, province of Iloilo. Part of the evidence produced by the appellant to prove possession of the land in litigation consists of the sixteen official receipts of land taxes showing payments thereof on a piece of land covered by Tax Declaration No. 6844 and assessed at ₱700 from 1926 to May, 1930, and by Tax Declaration No. 5405, assessed at ₱590 from 1931 to 1947, except the years 1939 to 1945, the corresponding receipts for which years not having been exhibited. It has been proven and not denied that the appellant possessed two parcels of land in the municipality of Janiuay, barrio Maiñguit and the tax receipts above-mentioned marked Exhibit 1 to 16 obviously refer to those two parcels of land. Following the ordinary course of things, the revision of tax declarations is made for the purpose of increasing the assessed value. Exhibits 1 to 5 cover the years 1926 to 1930 showing that the land therein referred to covered by Tax Declaration No. 6842 was assessed at ₱700 while official tax receipts marked Exhibits 6 to 15 refer to land covered by Tax Declaration No. 5405 which is only assessed at ₱590. Unless an explanation has been made giving the reason for the reduction of the assessed value, the presumption is that the land covered by Exhibits 6 to 16 is altogether different from the land referred to in Exhibits 1 to 5 covered by tax declaration No. 6842. The land in question as described in Exhibits A and B is situated in Bongol, barrio Manaolan, and is identified in Exhibit B as Lot No. 2660. Exhibits 15 and 16 for the years 1946 and 1947, respectively, which are both official tax receipts refer to a piece of land covered by tax declaration No. 5405 situated in barrio Maiñguit, without giving the cadastral lot number, while Exhibit C is an official tax receipt produced by appellee referring to lot No. 2660, or the very lot in question, which again goes to show that the official tax receipt produced by the appellant do not at all refer to said lot No. 2660 of the cadastral survey of Janiuay. The findings of the lower court, therefore, in this connection is supported by a clear preponderance of evidence.

The other errors assigned by the appellant need not be discussed.

Wherefore, the court finds that the decision appealed from is in accordance with law and the evidence and hereby affirms the same, with costs.

Edencia and *Martinez, JJ.*, concur.

Judgment affirmed.

[No. 3399–R. January 18, 1950]

PAULINO MATIRA and ARSENIA LUZON, plaintiffs and appellees, *vs.* EUSEBIO CARPIO, defendant and appellant

FRAUD; CONSTRUCTIVE FRAUD; CASES TO WHICH CONSTRUCTIVE FRAUD REFERS; CASE AT BAR.—Contructive fraud, from what may be gathered from cases and standard treatises on the matter, refers to cases in which some kind of fiduciary relations exist between the parties, as in the case of Severino *vs.* Severino, 44 Phil., 343; Rosa Jalandoni *vs.* Concepcion Carvalla, 48 Phil., 857; or to cases where some kind of fraud has been committed, as in the case of Clemente and Pichay *vs.* Lukban and Domingo, 43 Phil., 931 and the case of Government of the P. I. *vs.* Court of First Instance of Nueva Ecija, 49 Phil., 433. In the instant case there never existed any fiduciary relations between defendant and Alejandro Luzon in which the latter was the trustee and the former was the *cestui que trust;* hence, the theory of constructive fraud is not applicable.

APPEAL from a judgment of the Court of First Instance of Mindoro. Farol, J.

The facts are stated in the opinion of the court.

Manuel S. Gaba for appellant.
Claro M. Recto for appellees.

RODAS, *J.:*

Eusebio Carpio having been ordered in a decision rendered by the Court of First Instance of Mindoro to relinquish, deliver and vacate a portion of lot No. 2707 of the cadastral survey of Calapan, Mindoro, in favor of the plaintiffs and enjoined perpetually not to disturb the latter from their lawful possession of the aforesaid land, with costs, appealed from said decision on the following assignments of error:

I

"The lower court erred in applying the presumption of suppression of evidence against the defendant and appellant.

II

"The lower court erred in finding that exhibit 4 is null and void ab initio as bring a fictitious contract.

III

"The lower court erred in allowing notary public Rustico Maliwanag to falsify his own certificate and in believing the testimony of said notary public.

IV

"The lower court erred in construing the report of the clerk of court (Exhibit X) by finding that there is no dividing line between the portion claimed by defendant-appellant and that occupied by plaintiffs.

V

"The lower court erred in applying sections 39, 46, and 50 of Act No. 496, and in relying on the cases of Tuason *vs.* Reymundo, 28 Phil., 635, and Atender *vs.* Polestico, 43 Off. Gaz., 4697.

VI

"The lower court erred in holding the plaintiffs to be the absolute owners of the land in question.

VII

"The lower court erred in not ordering the plaintiffs and appellee and their father Alejandro Luzon to reconvey to the defendant-appellant the land bought by him from said Alejandro Luzon."

Alejandro Luzon was the registered owner of a parcel of land known as lot No. 2707 of the Cadastral Survey of Calapan, Mindoro, and covered by original certificate of title No. 333 of the office of the register of deeds of said province. On March 14, 1946 he sold the whole lot for ₱2,000 to Arsenia Luzon and Paulino Matira, his daughter and son-in-law, respectively, as shown by the corresponding deed of sale, marked Exhibit B, the registration of which in the office of the register of deeds brought about the cancellaltion of said original certificate of title and the issuance of transfer certificate of title No. 2103 in favor of the buyers. Again by virtue of said deed of conveyance, tax declaration, Exhibit D, was issued in favor of said buyers, to take effect commencing with the year 1947.

After buying the land Arsenia Luzon planted it to palay during the years 1946 and 1947 and gathered the fruits of the trees existing thereon without any opposition on the part of Eusebio Carpio until December, 1947 when the latter objected to further cultivation of said land by Arsenia Luzon, claiming ownership of one-half of said land, alleging that he acquired it through purchase from its original owner, as evidenced by document, marked Exhibit 4, which is a deed of sale in his favor, executed by Alejandro Luzon on June 11, 1931 of a portion of said lot No. 2707 containing an area of 75,109 square meters for the sum of ₱600, for which portion of said lot Eusebio Carpio secured a separate tax declaration, marked Exhibit 1, under date of December 28, 1936, and from which time he has been paying the corresponding assessment taxes. The foregoing are undisputed facts.

The execution of the deed of sale, Exhibit 4, in favor of the defendant has not been denied, although the alleged sale is claimed to be fictitious, for, according to the seller,

he had no intention of disposing of the land described in said Exhibit 4 at the time he executed it, although he wanted to make a donation of a portion of it in favor of said defendant in the future, and that, as a matter of fact he had not received from said defendant the consideration therein mentioned. His testimony to this effect has been corroborated by Rustico Maliwanag, the notary public who prepared the said document at the request of his *compadre* Eusebio Carpio, and caused it to be signed by Alejandro Luzon who told him then that he was signing said document not because he was really selling the land therein described in favor of Eusebio Carpio but because he was intending to donate to him a portion of his land.

Defendant testified that the consideration of ₱600 mentioned in the deed of sale in his favor was paid by him to Alejandro on installment basis; that when the latter offered to sell a portion of his land to him, he sold his own land situated in Katuiran, Baco, for ₱150 many years ago and delivered the proceeds of the sale to Alejandro as a part payment; that he used to gather *bejuco* and *diliman* from the land in question and sell them and then turn over the proceeds of the sale to Alejandro; that he had been helping Alejandro in cleaning lot No. 2707, and that everytime Alejandro paid him for his services he would return the money to him, and thus succeeded in paying the whole sum of ₱600; that it was only after fully paying said sum that he secured from Alejandro the deed of sale, Exhibit 4, in his favor; that he has been in possession of the land in question since thirty years ago during which he had been planting coconut, jack-fruit, beetle nut, *kapok* and *camansi* trees that are now bearing fruits, especially on the boundary line separating the portion claimed by him from the rest of the lot where he also planted plenty of *madre cacao*.

At the beginning of the cross-examination, defendant stated that the first partial payment he made in the sum of ₱150 was the proceeds of the sale of his land which took place so long ago that he does not remember when. Later on, he stated that he had to sell the land recently in order to have money with which to defray the expenses of this litigation. Again he testified that everytime Alejandro paid him for cleaning his land he would return the money to the latter for which receipts were issued to him, which receipts had been turned over by him to his attorney, Mr. Gaba. The latter, when asked in open court to produce said receipts, manifested that his client must have been confused, for he had never delivered to him any receipt. Defendant stated that he paid Alejandro, first, with the proceeds of the sale of his land, then with the proceeds of the sale of *bejuco* and *diliman* which he

used to gather from the land in litigation, and finally with the payments he received from Alejandro for services rendered by him in cleaning his land. However, his brother Guillermo Carpio, who seems to know each and every detail of the sale of the land to the defendant, testified that the full value of said land was paid by Eusebio through his labor. Defendant testified that he secured the tax declaration for the land from the day he bought it, which according to Exhibit 4 was June 11, 1931, and that from said date, he has personally been paying the taxes to the municipal treasurer. However, tax declaration, Exhibit 1, apparently the first one issued in his name, is dated December, 1936.

Regarding the alleged planting of trees on the boundary line separating the portion of land said to have been acquired by the defendant from the rest of the lot, the lower court, at the instance of attorney Mr. Gaba for the defendant, commissioned the clerk of court to conduct an ocular inspection in order to verify the truth of the contention of the said defendant that there exists a dividing line separating the land in question from the other half of lot No. 2707. His report reads as follows:

"Comes now the undersigned Clerk of Court and before this Honorable Court respectfully stated:

"That on February 9, 1948, he was ordered by this court to make an ocular inspection of the boundary line between the land owned by the plaintiffs and the land claimed by the defendant, and to verify whether the said boundary line is planted with madrecacao, bettlenut kapok and kamansi trees.

"That in compliance with the said order of the court, the undersigned accompanied by the plaintiff Paulino Matira and one Florentino Ylagan as representative of Attorney Valencia, and the defendant and his attorney, Mr. Manuel S. Gaba and Gabriel Hernandez, constituted this morning at about 10 o'clock to the place where the land involved in this case is situated. Upon reaching the place, the parties agreed: That point 'A' and point 'D' of the enclosed sketch which is hereto attached as Annex 'A', is the boundary line of the land of the plaintiffs and the land claimed by the defendant, lots Nos. 2707–A and 2707–B, respectively. During the ocular inspection, we found out that from point 'A' to point 'B' of the sketch which is 45 meters in length, not a single tree is planted therein, the same being dry rice land, from point 'B' to point 'C' which is 65 meters in length, various kinds of trees such as madrecacao, bettlenut, kapok and kamansi trees were planted, calculated to be about 25 years old; and from point 'C' to 'D' which is about 300 meters in length, not a single tree is also planted, the same being dry rice land and in a portion of the same is stagnant water.

"Wherefore, this report is hereby submitted for whatever action the Court might take on the matter."

The finding of the lower court to the effect that there is no dividing line between the portion claimed by the appellant and the rest of the lot is assigned as one of the errors committed by said court. Between the testimony

of the defendant and the report above-quoted of the occular inspection conducted by the clerk of said court with the assistance of both parties and their respective attorneys, the correctness of the choice of the lower court is beyond question.

Taking the evidence by and large, it may be safely concluded that the defendant had really been in possession of a portion of the land around which he had been planting several kinds of trees, a fact admitted by Arsenia Luzon, one of the plaintiffs, and on which portion of land defendant had built his house wherein he has been living during the period of time he mentioned. It may also be concluded that because of the services rendered by the defendant in helping the original owner of the land clean the same and for other good considerations, said former owner had entertained the intention of donating to the defendant a portion of his land, not probably as much as one-half, but that portion occupied by his house and surrounded by the trees planted by said defendant, and for reasons which had not been explained, Alejandro Luzon knowingly executed the document, Exhibit 4, and allowed the defendant to secure the corresponding tax declaration in his own name. Under the circumstances, there was nothing that would prevent the original owner from disposing of the whole lot including the portion intended to be donated to the defendant. There was no sale at all because it has been established satisfactorily that there had been no consideration, defendant having failed to prove that he actually paid the sum of ₱600 or any part thereof. There could have been no donation because the requisites of a valid donation of a piece of real estate have not been complied with (Legosto *vs.* Verzosa, 54 Phil., 766) and the ownership of the land claimed by the defendant could not have been transferred and acquired by him on the ground that the deed of sale executed in his favor was not at all registered, as provided for in article 50 of the Land Registration Act.

Granting that there had been a sale in favor of the defendant of the portion of land claimed by him which was later sold to the plaintiffs, which sale was not registered, and granting further that article 1473 of the Civil Code is applicable to the case at bar, said sale cannot prevent the acquisition by the plaintiffs of said land unless there is proof of bad faith on their part. There is no evidence that the plaintiffs even know at the time they bought lot No. 2707 from the original owners the fact that the land had been sold previously to the defendant. On the contrary, it was shown that Arsenia Luzon, upon acquiring the land, made demand on Eusebio Carpio to vacate the same but the latter requested her to allow him to remain because his own land was usually over-flooded,

and this fact is corroborated by the further fact that she cultivated almost all the land including the portion claimed by the defendant for two consecutive years and gathered the fruits of the trees existing thereon without any objection on the part of the latter who, however, stated, as to the fruits that he had mortgaged the trees from where they were gathered in favor of Arsenia Luzon, and hence he could not object. Arsenia denied this alleged mortgage in her favor.

The last error assigned by the appellant is the failure of the lower court to order the plaintiffs-appellees and their father, Alejandro Luzon, to reconvey to the defendant-appellant the land alleged to have been bought by him from the latter, and discusses this question under the theory of constructive fraud. We have examined the cases cited by counsel for appellant and found them all not applicable to the instant case. Constructive fraud, from what may be gathered from said cases and standard treatises on the matter, refer to cases in which some kind of fiduciary relations exist between the parties, as in the case of Severino *vs.* Severino, 44 Phil., 343; Rosa Jalandoni *vs.* Concepcion Carvalla, 48 Phil., 857; or to cases where some kind of fraud has been committed, as in the case of Clemente and Pichay *vs.* Lukban and Domingo, 43 Phil., 931 and the case of Government of the P. I. *vs.* Court of First Instance of Nueva Ecija, 49 Phil., 433. In the instant case there never existed any fiduciary relations between defendant and Alejandro Luzon in which the latter was the trustee and the former was the *cestui que trest.* When original certificate of title, Exhibit A, was issued in favor of Alejandro Luzon on September 24, 1928, defendant had not as yet began to live on the land in question, nor had he acquired any right, title or interest whatsoever is and to said land, for, as he alleges, he only bought the same in 1931. Neither is there any proof of fraud committed by Alejandro Luzon against the defendant arising from any valid contract entered into between them which, for the sake of equity or justice, would require the granting of the remedy prayed for. Such remedy is not at all available against the plaintiffs-appellees in this case where there is no proof that said plaintiffs-appellees were guilty of bad faith in the acquisition of said land. Neither can it be granted in this case against Alejandro Luzon even if it were available against him, a question which we do not decide, Alejandro Luzon not being a party to this case.

In view of the foregoing, the court finds the decision appealed from to be in accordance with law and the evidence and hereby affirms the case, with costs.

Endencia and *Martinez, JJ.*, concur.

Judgment affirmed.

[No. 3523–R. January 19, 1950]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* PLACIDO MESA, defendant and appellant

CRIMINAL LAW; ILLEGAL POSSESSION OF FIREARM; POSSESSION BY FIREARMS REPAIRER, NOT ANIMUS POSSIDENDI.—The essential element of illegal possession is *animus possidendi*, which means intention to possess (in order to use the thing possessed in one way or another). But the possession involved in accepting a firearm for repair until its return to the owner, after it is put back in good shape, as in the instant case, cannot mean *animus possidendi*. Hence, accused should be acquitted.

APPEAL from a judgment of the Court of First Instance of Mindoro. Ramos, J.

The facts are stated in the opinion of the court.

Ildefonso M. Bleza for appellant.

First Assistant Solicitor General Roberto A. Gianzon and *Acting Solicitor Victorino Pasco* for appellee.

MARTINEZ, *J.:*

Placido Mesa was prosecuted for illegal possession of firearm and, after due trial, convicted to an indeterminate penalty of from 5 years, 6 months and 1 day to 8 years and 1 day, with costs. From this judgment he filed an appeal claiming that the trial court had committed the following errors:

I

"The trial court erred in not finding the accused justified in holding and in being in possession of the firearm involved.

II

"The trial court erred in giving weight and full credit to the testimony of the complaining witness Esteban Tejoso and those of other government witnesses.

III

"The trial court erred in not giving weight and full credit to the testimony of the accused and those of his witnesses.

IV

"The trial court erred in not holding government witnesses Esteban Tejoso as the one who should be prosecuted for the crime of illegal possession of firearm and not the accused.

V

"The trial court erred in holding the accused was guilty of the crime of illegal possession of firearm.

VI

"The trial court erred finally in not acquitting the accused for lack of sufficient evidence against him and on the ground of complete innocence, or at least on the ground of reasonable doubt."

The above enumerated errors, except the fourth (which requires no discussion), can be embodied in the proposition of whether the court *a quo* erred in giving more weight

to the evidence of the prosecution, and in convicting the accused thereon for the crime charged.

One Esteban Tejoso, a duly licensed firearm holder, left his Eddystone rifle in the house of his son-in-law Mariano Tanieka with whom he used to stay when he was out working on his farm at Palele. On November 16, 1947, Tanieka informed his father-in-law that Placido Mesa came the night before and through intimidation took the rifle away from him. On this information, Tejoso sought Placido Mesa and found him at his boarding house in the *población* of Lubang. Mesa denied he had the firearm when Tejoso asked for it, following which the latter left, went to barrio Vigo and reported the loss of his rifle to Sgt. Sotero Marquina of the Philippine Constabulary stationed thereat. The other witness of the prosecution was Sergeant Marquina, who testified that on November 17, 1947 he was on regular patrol duty in the poblacion of Lubang when he saw Placido Mesa on Asuncion street carrying a rifle. He approached him and asked for the license of the firearm, to which Mesa answered he had none. The sergeant further stated that he confiscated the firearm then and there, brought Mesa to the municipal building and asked the chief of police to take immediate action on the matter.

The contention of the defense is that the rifle in question happened to be in possession of Placido Mesa, who was a mechanic, for repairs. Esteban Tejoso, accompanied by Juan Garcia, personally brought it to Mesa's house on November 9, 1947. On the 16th Tejoso sent one Amando Alegre to call for the rifle, but having not finished the repair Mesa told the messenger he would deliver the firearm himself to Tejoso on the following day. Thus on November 17 Mesa was carrying the firearm when he met Sergeant Marquina and Private Kahayon on his way and invited them to ride in the carretela he had hired for his trip from the poblacion to barrio Tagbac. The sergeant and the soldier came along and upon arrival at Tagbac they stopped at the house of Juan Garcia. A few minutes later Tejoso showed up and the rifle was delivered to him in the presence of Sergeant Marquina. Mesa also testified that he was arrested on December 10, following a complaint against him in the justice of the peace of Lubang.

The theory of the government that Mesa forcibly took the rifle away from Tanieka is improbable. In the first place, for unknown reasons, Tanieka failed to testify to that fact, and Tejoso's testimony on the matter is therefore hearsay evidence. In the second place, the record does not reveal any compelling motive for which appellant should grab a firearm, particularly one belonging to a prominent person, such as Tejoso who was a municipal councilor. Mesa could not possibly be unaware of the

consequences of such act. There is no suggestion that he was a quarrelsome man, on the contrary he was a mechanic and seemingly living contentedly on his trade. Why should he steal a firearm instead of applying for a license to possess one? Lastly, it is unlikely that the appellant would show himself on the street ostentiously carrying the firearm he had stolen the day before.

In this connection, it should be remembered Tejoso said that, immediately after seeing Mesa, he called the attention of Sergeant Marquina to the grabbing of his Eddystone rifle. Had he done so, Marquina would not have lost time sending his men after Mesa, considering the gravity of the case. But the meeting of the sergeant with Mesa on Asuncion street was to all appearances a casual one. He testified:

"Q. Why were you in the población that time?—A. We were in Lubang because as peace officers it is our duty to gather information regarding the situation of the people." (t. s. n., p. 3.)

Marquina throughout his testimony failed to mention that Tejoso reported the loss of his fire-arm to him.

We have also noticed that Mesa had directly testified that he was arrested on December 10 and on this point his testimony is uncontradicted. Presumably his arrest followed immediately after the filing of the complaint against him. It seems unusual that his apprehension came so belatedly in the light of the fact that Marquina caught him *in fraganti* on November 17, carrying a firearm without authority, and there being then sufficient available evidence that he grabbed it from Tanieka. This shows that at the beginning there was no strong incriminating evidence against Mesa and further investigation had to be conducted from November 17 to December 10. In the meantime, Tejoso had to build his case, to avoid responsibility for having delivered his rifle to Mesa, for it seems to be a common belief in Lubang that a firearm holder was prohibited to give his firearm to anyone else on any pretext, not even for its repair.

Therefore, the oft-mentioned rifle must have been handed over to Mesa for repairs, as testified to by the appellant himself and Zacarias Alcontado. This conclusion is unavoidable, there being only two theories advanced in this case, that of the prosecution commented on above and found to be untenable, and that of the defense claiming that the rifle was out of order and Tejoso brought it to the house of Mesa asking the latter to put it in good shape. We cannot make an alternative one which must necessarily be based on mere supposition.

This being the case, we shall examine whether Mesa violated the law when he accepted Tejoso's rifle for repair. The essential element of illegal possession is *animus possidendi*, which means intention to possess (in order to use

the thing possessed in one way or another). But the possession involved in accepting a firearm for repair until its return to the owner, after it is put back in good shape, cannot mean *animus possidendi*.

The law also provides: "It shall be unlawful for any person to import, receive, buy, or in any way acquire any firearm, etc." (section 878 of the R. A. C. as amended by section 1 of Commonwealth Act No. 56, in connection with section 2692 of the R. A. C. and finally amended by Republic Act No. 4). It is true that the appellant received Tejoso's Eddystone rifle, but he had received it for the purpose of repairing the firearm and thereafter return it to the owner.

In the case of People *vs.* Sulpicio Benero, CA–G. R. No. 2171–R, October 11, 1948, it has been found that the appellant acknowledged the possession of certain carbines but considering his explanation that he did not want and never intended to possess the carbines for himself, this court said:

"We hold it essential for the conviction of an accused charged with illegal possession of firearm, that *animus possidendi* on his part be proven or reasonably inferred from the evidence produced. * * * that appellant did not want and never intended to possess for himself the carbines in question."

The only evidence implying the guilt of Mesa is the fact that Sergeant Marquina found him carrying a firearm. How Mesa came to be in possession of such firearm, his explanation on the matter must be given more weight than that of Tejoso. The prosecution has failed to prove the *animus possidendi* on the part of the appellant, and therefore, the evidence of record is not sufficient to convict him for illegal possession of firearm.

Consequently, let the decision of the court *a quo* be reversed, with costs de oficio.

Endencia and *Rodas, JJ.*, concur.

Judgment reversed.

[No. 5228–R. January 19, 1950]

SERGIO BUENAGUA, petitioner, *vs.* THE Hon. EMILIO PEÑA, Judge of the Court of First Instance of Manila, THE SHERIFF OF MANILA, and MALAYAN UNIVERSITY, INC., respondents.

1. PLEADING AND PRACTICE; EJECTMENT; EXECUTION OF JUDGMENT OF THE MUNICIPAL COURT PENDING APPEAL; SECTION 8, RULE 72, RULES OF COURT.—Section 8, Rule 72 of the Rules of Court, provides among other things that execution of the judgment of the Municipal Court shall issue notwithstanding the appeal to the Court of First Instance, "unless, during the pendency of the appeal, he (defendant-appellant) pays to the plaintiff or to the Court of First Instance the amount of rent due from

time to time under the contract, if any, as found by the judgment of the justice of the peace or municipal court to exist, or, in the absence of a contract, he pays to the plaintiff or into the court, on or before the tenth day of each calendar month, the reasonable value of the use and occupation of the premises for the preceding month at the rate determined by the judgment." In the present case, it was the judgment of the Court of First Instance, not yet final, which was ordered executed in the writ issued by the clerk of court in pursuance to an order of the court. It is evident that the judgment of the court of first instance could not have been executed, for the reason that under section 8, Rule 72, the judgment that should have been ordered executed was that of the municipal court. The case was still *pending* in the Court of First Instance until the judgment of the latter should have become final. Consequently, it was an error to execute the judgment of the Court of First Instance instead of that of the Municipal Court.

2. ID.; WORDS AND PHRASES; INTERPRETATION; REASONABLE INTERPRETATION OF WORDS USED IN SECTION 8, RULE 72, RULES OF COURT.—The words used in section 8, Rule 72, Rules of Court, "if judgment is rendered against the defendant, execution shall issue immediately, unless an appeal has been perfected and the defendant to stay execution files a sufficient bond, etc.," reasonably interpreted, mean that as soon as judgment is rendered, the plaintiff may ask for execution if it is evident that the defendant has no intention of appealing, although the period for appealing has not yet elapsed.

ORIGINAL ACTION in the Court of Appeals. Certiorari.

The facts are stated in the opinion of the court.

Tadena & Beltran and *Cesar F. Mata* for petitioner.
Castañeda & Castañeda for respondent.

JUGO, *Pres. J.:*

On December 29, 1947, the respondent Malayan University, Inc. (plaintiff in the court below) filed a complaint for ejectment against the petitioner (defendant in the court below) with the Municipal Court of the City of Manila.

On March 11, 1948, the municipal court rendered judgment ordering the defendant to vacate the premises involved and to pay to the plaintiff the sum of ₱433.84 a month for November and December, 1947, to pay monthly the sum of ₱33.84 for January and February, 1948, as difference between the amount due and that paid to Martinez Leyba, Inc., and to pay a further sum of ₱433.84 per month since March, 1948, until he vacated the premises, with costs.

On May 11, 1948, the petitioner herein appealed to the Court of First Instance.

On September 5, 1949, the Court of First Instance rendered judgment ordering the petitioner to vacate the premises and to pay to the respondent the amount of ₱1,910.64 as rentals due up to July 31, 1949, and to pay further a monthly rental of ₱433.84 from the month of

August 1949 up to the time that the petitioner should vacate the premises, with costs. By the way, these sums correspond to the amount of rents included in the judgment of the Municipal Court, plus the rents for the time that had elapsed since the judgment of the latter.

On October 13, 1949, the respondent Malayan University, Inc. filed a petition for immediate execution of the judgment. It is not clear from said petition whether the respondent was praying for the execution of the judgment of the Municipal Court or of that of the court of first instance just then rendered. The Court of First Instance wrote a note at the bottom of the petition which reads as follows:

"GRANTED
October 22, 1949"
"EMILIO PEÑA
Judge"

(Appendix E)

In compliance with the above resolution, the Clerk of Court of the Court of First Instance issued a writ of execution of the judgment of the Court of First Instance, incorporating therein the dispositive part of said judgment.

On November 10, 1949, the petitioner filed an "urgent motion to suspend execution of judgment." At the bottom of said motion is written the following:

"DENIED
November 12, 1949"
"EMILIO PEÑA
Judge"

(Appendix G)

The petitioner, before the judgment of the Court of First Instance became final and within the regular period for appealing, filed his notice of appeal, record on appeal, and appeal bond, thus perfecting his appeal to the Court of Appeals.

The petitioner now prays that a writ of preliminary injunction be issued against the respondents, enjoining them from enforcing the order of execution in question so that the petitioner may prosecute his appeal; and such other order or orders be issued to preserve the rights of the petitioner and maintain in *status quo* the standing of the parties in civil case No. 5389, pending its final adjudication.

As above stated, it is not clear whether the petition for immediate execution of the judgment, dated October 13, 1949, filed by the respondent Malayan University, Inc., prayed for the execution of the judgment of the municipal court or of that of the court of first instance which had not yet become final and was still subject to appeal by the petitioner. However, the order of execution dated October 25, 1949, issued by the clerk of court in

compliance with the order of the court refers specifically and exclusively to the judgment of the Court of First Instance. Section 8, Rule 72, provides among other things that execution of the judgment of the municipal court shall issue notwithstanding the appeal to the Court of First Instance, "unless, during the pendency of the appeal, he pays to the plaintiff or to the Court of First Instance the amount of rent due from time to time under the contract, if any, as found by the judgment of the justice of the peace or municipal court to exist, or, in the absence of a contract, he pays to the plaintiff or into the court, on or before the tenth day of each calendar month, the reasonable value of the use and occupation of the premises for the preceding month at the rate determined by the judgment." The judgment referred to is that of the municipal court appealed to the Court of First Instance.

In the present case, it was the judgment of the Court of First Instance, not yet final, which was ordered executed in the writ issued by the clerk of court in pursuant to an order of the court. It is evident that the judgment of the Court of First Instance could not have been executed, for the reason that under section 8, Rule 72, the judgment that should have been ordered executed was that of the municipal court. The case was still *pending* in the Court of First Instance until the judgment of the latter should have become final. Consequently, it was an error to execute the judgment of the Court of First Instance instead of that of the municipal court. It may be argued that inasmuch as the petition for execution of the judgment did not state clearly which judgment should be executed, the court must have ordered the execution of the proper judgment which was that of the municipal court. However, the clerk of court issued execution of the judgment of the Court of First Instance. It cannot be said that this error was committed only by the clerk of court, for when the petitioner asked for the suspension of the execution issued by the clerk of court, the court denied said motion. This denial impliedly ratified the order issued by the clerk of court, making it the order of the court itself.

In the case of De la Fuente *vs.* Jugo (42 Off. Gaz., No. 11, p. 2764), it was held by the Supreme Court that after the defendant in an ejectment case has perfected his appeal to the Supreme Court and his record on appeal has been approved by the Court of First Instance, the latter court is powerless to issue execution of the judgment of the municipal court. The reverse of this proposition would also seem true; *viz.*, that before the appeal is perfected the Court of First Instance has the power to issue execution of the judgment of the municipal court.

It may be contented that the words used in section 8, Rule 72, "if judgment is rendered against the defendant,

execution shall issue immediately, unless an appeal has been perfected and the defendant to stay execution files a sufficient bond, etc." mean that as soon as a motion for the execution of the judgment is filed, although the judgment is not yet final and the defendant may still appeal, execution should issue. If this interpretation were followed, there would be a race between the plaintiff, with his petition for execution, and the defendant, with his appeal papers, toward the court, because if the plaintiff with his petition for execution reaches the court first he would obtain execution; on the other hand, if the defendant with his appeal papers gets in touch with the court before the plaintiff, he would forestall the order of execution. This could not have been the intention of the legislator. The reasonable interpretation of said terms is that as soon as judgment is rendered, the plaintiff may ask for execution if it is evident that the defendant has no intention of appealing, although the period for appealing has not yet elapsed.

It is clear, however, that although the Court of First Instance had rendered judgment which was not yet final, the respondent Malayan University, Inc. could have asked for the execution of the judgment of the municipal court in view of the fact that the appeal in the Court of First Instance from the municipal court was yet *pending* before the former's own judgment had become final.

In view of the foregoing, the order of execution dated October 25, 1949, and all proceedings taken pursuant to it are hereby declared null and void and of no force and effect; without prejudice to the right that the respondent Malayan University, Inc. may have, at the present or future stage of the proceedings in the ejectment case herein involved, to ask for the execution of the proper judgment before the proper court, in accordance with sections 8 and 9, Rule 72. Without pronouncement as to costs. It is so ordered.

De la Rosa, J., concur.

Felix, J., concur in the result.

Order declared null and void and of no force and effect.

[No. 3769-R. January 23, 1950]

VICENTE BLANCO, plaintiff and appellee, *vs.* JUAN R. ALBANO, defendant and appellant

[No. 3770-R. January 23, 1950]

MARIO CAYETANO assisted by guardian, JUAN R. ALBANO, plaintiff and appellant, *vs.* VICENTE BLANCO, defendant and appellee.

LAND REGISTRATION; CADASTRAL LAW; ERROR COMMITTED IN CADASTRAL CASES; REMEDY.—A cadastral case is a proceeding *in rem* in which wide publication is required and notices forwarded to

all the parties concerned and whether notice has been actually received by said parties or not, they are bound by the decision rendered therein unless appeal has been taken or the action contemplated in section 38 of Act No. 496 is filed in due time. Any error committed in cadastral cases could be corrected only through appeal. The judgment therein rendered cannot be collaterally attacked in a case involving ownership.

APPEAL from a judgment of the Court of First Instance of Ilocos Norte. Quitoriano, J.

The facts are stated in the opinion of the court.

Esteban Aguinaldo for appellant.
Elviro L. Peralta for appellee.

RODAS, *J.:*

This is an appeal from a decision of the Court of First Instance of Ilocos Norte in the above-entitled cases which were tried jointly, the dispositive part of which reads as follows:

"EN MERITOS DE TODO LOS EXPUESTOS, al Juzgado dicta sentencia:

"En la causa civil No. 148, la demanda queda sobreseida, y tambien queda sobreseida, la reconvención del demandado, porque dicha reconvención se refiere al palay, objeto de la causa civil No. 31. Sin costas.

"En la causa civil No. 31, el juzgado condena al demandado Juan R. Albano a pagar al demandante la suma de Ciento doce (₱112.00) pesos, importe del palay percibido ilegalmente por el demandado. Sin costas.

"ASI SE ORDENA."

The appeal is predicated on the following assignment of errors:

I

"In maintaining that Vicente Blanco is the legitimate son of Venancio Hernando;

II

"In declaring that there are no irregularities in the adjudication of ⅙ part of each lots to Vicente Blanco;

III

"In allowing the appellee to recover six *uyones* of palay or ₱112;

IV

"In disallowing the reconveyance to the appellant Mario Cayetano the ⅙ part of each lots which were illegally adjudicated to Vicente Blanco; and

V

"In denying the motion for new trial and reconsideration of judgment."

On January 10, 1944, Vicente Blanco filed a complaint in the Justice of the Peace Court of Laoag, Ilocos Norte, praying that the defendant Juan R. Albano be sentenced to deliver to plaintiff eight *uyones* of palay or, in case of failure to do so, to pay him the sum of ₱112, and costs.

From the decision of the Justice of the Peace Court, Juan R. Albano appealed to the Court of First Instance of Ilocos Norte on February 1, 1944. On May 29 of the same year, Mario Cayetano, assisted by his guardian Juan R. Albano, filed in the Court of First Instance of Ilocos Norte a complaint against Vicente Blanco praying that the adjudication in favor of the latter of the 1/6 portion of the four parcels of land from which were harvested eight *uyones* of palay, the subject-matter of the case appealed from the Justice of the Peace Court, be declared to have been obtained through fraud and that same be held to belong to the plaintiff Mario Cayetano, and that the defendant Vicente Blanco be ordered to transfer the ownership of said 1/6 portion of the four parcels of land above-mentioned to said Mario Cayetano and to pay the latter damages in the sum of ₱300.

On March 17, 1948, Civil Case No. 31 appealed from the Justice of the Peace Court of Laoag to the Court of First Instance of Ilocos Norte, entitled Vicente Blanco *vs.* Juan R. Albano and Civil Case No. 148, entitled Mario Cayetano, assisted by his guardian Juan R. Albano *vs.* Vicente Blanco, were tried jointly. From the evidence presented by both parties, it appears that the four parcels of land in question are covered, the first three by original certificate of title No. 22190, and the last by original certificate of title No. 22854 of the office of the register of deeds of said province which parcels of land belonged originally to the brothers Santiago, Florentino and Lucas, all surnamed Hernando, as co-owners of undivided equal shares. Lucas Hernando was survived by his three children, Venancio, Antonia and Gregoria, *alias* Cristina. Venancio and Antonia died single but Gregoria, *alias* Cristina, had a daughter named Guillerma Cayetano who survived her and who in turn died leaving a son named Mario Cayetano, so that the 1/3 portion which belonged to Lucas Hernando and inherited upon his demise by his children Venancio, Antonia and Gregoria, *alias* Cristina, should belong entirely to Mario Cayetano, grandson of Gregoria who died the last leaving an heir Guillerma who in turn died leaving Mario Cayetano as her only heir.

When cadastral cases Nos. 35 and 38, G.L.R.O. cadastral records Nos. 1181 and 1188 were instituted in 1933, according to the appellants, Quirico Hernando, owner of 1/3 of said four parcels of land, being the son of Santiago Hernando, was the one who prepared the answers for the said four parcels of land and in the answer corresponding to the 1/3 portion belonging to Lucas Hernando, which should be inherited, as above-stated, exclusively by Mario Cayetano, included Vicente Blanco as a co-owner, so that said 1/3 portion was adjudicated 1/6 to Vicente Blanco, married to Florentina Julian, and the other 1/6 to Mario Ca-

yetano. The above certificates of title were issued as far as the ⅓ of each and every one of the above-mentioned four parcels of land which originally belonged to Lucas Hernando, in the manner above set forth, original certificate of title No. 22190 covering the first three parcels of land, on January 7, 1941, and original certificate of title No. 22854 covering the fourth parcel of land, on March 22, 1941.

On the trial of the above-mentioned cases, Vicente Blanco testified that he was the acknowledged natural child of Venancio Hernando, although the deed of recognition which was ratified before Notary Public David Flor was lost during the revolution and hence could not be produced. Appellant contends that the relationship between Venancio Hernando and Vicente Blanco has not been duly established. This court cannot look into this matter of relationship for the purpose of declaring that Vicente Blanco is not entitled to the ⅙ portion of the above-mentioned parcels of land which was adjudicated to him in cadastral cases Nos. 35 and 38 above-mentioned, as shown by the two certificates of title, Exhibits A and B. Any error committed in said cadastral cases could have been corrected only through appeal. The judgment therein rendered cannot be collaterally attacked in this case.

Mario Cayetano and his guardian Juan R. Albano alleged that the decrees in said cases were secured by Vicente Blanco through fraud on the ground that they had not been notified of the hearing. A cadastral case is a proceeding *in rem* in which wide publication is required and notices forwarded to all the parties concerned and whether notice has been actually received by said parties or not, they are bound by the decision rendered therein unless appeal has been taken or the action contemplated in section 38 of Act No. 496 is filed in due time. According to said certificates of title the decrees by virtue of which they were issued were dated May 31, 1940 and June 8, 1940, respectively.

It appears from the very Exhibits A and B of the appellants that Vicente Blanco is the owner of ⅙ of each and every one of the said four parcels of land, which adjudications made in the corresponding cadastral cases cannot be reversed or modified by this court, and it appearing further that the palay disputed by the parties had been gathered from the said ⅙ portion of said parcels of land by Vicente Blanco, the court finds no error in the judgment appealed from.

In view of the foregoing, the judgment appealed from is hereby affirmed, with costs.

Endencia and *Martinez, JJ.*, concur.

Judgment affirmed.

[No. 2789-R. January 24, 1950]

DIONISIA CANINDOT, plaintiff and appellant, *vs.* BASILIA ROSALES DE ARONG, defendant and appellee

ACTION; CAUSE OF ACTION; TEST OF SUFFICIENCY OF FACTS TO CONSTITUTE A CAUSE OF ACTION.—The test of the sufficiency of the facts found in a petition to constitute a cause of action is whether or not, admitting the facts alleged, the court could render a valid judgment upon the same, in accordance with the prayer of the petition. (Paminsan *vs.* Costales et al., 28 Phil., 487, 489.)

APPEAL from an order of the Court of First Instance of Cebu. Macadaeg, J.

The facts are stated in the opinion of the court.

Salvadora A. Logroño for appellant.
Jose F. Avila for appellee.

OCAMPO, *J.:*

This is an appeal against the order of the Court of First Instance of Cebu dismissing the complaint filed by the plaintiff-appellant in said court which reads as follows:

"The plaintiff through her undersigned attorney, as cause of action, to this honorable court respectfully alleges:

"1. That she is of legal age, widow, with present residence and postal address at Santa Rosa, Opon, Cebu, Philippines;

"2. That the defendant is the wife and administratrix of the estates of Pedro Arong, deceased, of legal age, and with present residence and postal address at Sanciangco Street, Cebu City, Philippines;

"3. That Pedro Arong, deceased, was the only son of the plaintiff;

"4. That the plaintiff is the absolute owner and in actual possession of lots Nos. 6029, 6002, and 6004 of the cadastral survey of Santa Rosa, Cebu, from time immemorial, adversely, openly and continuously, particularly described as follows:

"(*a*) Lot No. 6029: bounded on the north, by a road, and lot No. 6027; on the east, by lots Nos. 6030 and 6031; on the south, by lot No. 6032 and on the west, by lot No. 1028.

"(*b*) Lot No. 6002: bounded on the north, by lot No. 6001; on the east, by a road and lot No. 6003; on the south, by lot No. 6004 and on the west, by lot No. 6001.

"(*c*) Lot No. 6004: bounded on the north, by lots Nos. 6002 and 6003; on the east, by lots Nos. 6005 and 6006; on the south, by lot No. 6007 and on the west, by lots Nos. 6008 and part of 6001.

"5. That the actual value of lots Nos. 6029, 6002 and 6004 is ₱4,000 due to improvements made therein;

"6. That the above-mentioned lots are erroneously decreed by the cadastral judge in 1930 in favor of Pedro Arong, the son of the herein plaintiff because of and under the following circumstances:

"(*a*) Pedro Arong, being the only son of the plaintiff and who was the only one in the family that received high school education, was entrusted by the herein plaintiff to look after her property following the death of her husband. Pedro Arong was also authorized by the herein plaintiff with full trust and confidence to represent her in her claim and interest in her ten parcels of land situated in Santa Rosa, Opon, Cebu, during the cadastral survey in the Islands in 1926. He was further authorized to file answers

in the name of the plaintiff in the corresponding cadastral cases for said lost;

"(*b*) That without the knowledge and consent of the plaintiff, Pedro Arong filed answer claiming the said lots to be exclusively his own properties to the prejudice of the plaintiff and of his seven sisters, his coheirs;

"(*c*) That Pedro Arong died during the enemy occupation without the error corrected;

"(*d*) That the plaintiff had no knowledge of the decrees in favor of Pedro Arong until two months ago when the administratrix offered said lots for sale;

"(*e*) That the one-year period prescribed by the Land Registration Act within which to act for a review of the decree has already expired, for which reason, the plaintiff has no other remedy than to avail herself of section 38 of Land Registration Act;

"Wherefore, this honorable court is respectfully prayed to render judgment in favor of the plaintiff and against the defendant, to wit:

"1. To compel the said defendant to execute in favor of the plaintiff the corresponding and proper deed of transfer of said lots Nos. 6029, 6002, and 6004, of the cadastral survey of Santa Rosa, Opon, Cebu; in case of refusal of said defendant to do so, to declare the plaintiff the absolute owner of said lots; to order the cancellation of the title issued in the name of Pedro Arong, and to order the Register of Deeds of the Province of Cebu to issue a new one in the name of the herein plaintiff Dionisia Canindot, of legal age, widower, with present residence and postal address at Santa Rosa, Opon, Cebu, Philippines.

"2. In case of failure on the part of the defendant to execute said deeds of transfer or at the discretion of the court, to order said defendant to pay to the plaintiff the sum of ₱4,000, the actual value of the lots in question, and the costs of the present action;

"3. To grant the plaintiff any and further remedy to which she may be entitled by law and equity.

"Cebu City, September 13, 1947."

The order of the court below dismissing the complaint was based on a motion, erroneously entitled a "Motion to Quash" which should correctly be entitled "Motion to dismiss." It alleges that, first—the complaint is ambiguous, unintelligible and uncertain; and second—that the complaint does not state facts sufficient to constitute a cause of action.

The question to be resolved in this case is whether the allegations of facts of the complaint constitutes a cause of action against the defendant. The trial court, in dismissing the complaint, said:

"It is clear therefore that the action seeking to annul the decree has already expired inasmuch as said decree had been issued in the year 1930. Ventural in his Land Registration Book says the following:

> 'The purpose of the law in providing one year within which to review the decree on the ground of fraud is to put a limit to the time within which the true owner of the property may have a chance to have the decree revoked, thereby enabling him to retain his title to the property. If the law had intended that the real owner may ask for the reconveyance after the expiration of the one-year period it should have so provided expressly, but precisely it did not because it would be inconsistent with

the very purpose of the review within the period of one year. If he can have the land reconveyed to him after the expiration of said one-year period, then the purpose of the law in providing for said period of review becomes illusory.

'It should be observed that when a petition for reconveyance is filed, a hearing must be held in which he should prove by competent evidence that the registration was procured by fraud. The registered owner should be given a chance to disprove the claim that the registration was fraudulent. Such being the case, there is a rehearing regarding the title of the property, a situation which should never be allowed after the expiration of the one-year period for review on the ground of fraud. Such a rehearing has the effect of undermining the very finality and definiteness of the decree of registration and the registration proceeding. It may be agreed that the person who procured the registration by fraud has no right to retain the property. The law itself provides the answer to such argument. It gives the aggrieved party the right to ask for the review of the decree on the ground of fraud within a limited period, and if he fails to do so he can have an action for damages against the offending party, and if the latter is insolvent he can recover damages from the Assurance Fund. Such a relief is peculiar to the Torrens System, and the Assurance Fund has been created expressly to temper the harshness of the principle of the Torrens System.'

"In view of the foregoing, it is the opinion of this court and it so holds that the complaint should as it is hereby dismissed without pronouncement as to costs."

The appellant contends that the trial court erred in reaching the conclusion above quoted because she does not seek to reopen and review the decree.

The test of the sufficiency of the facts found in a petition to constitute a cause of action is whether or not, admitting the facts alleged, the court could render a valid judgment upon the same, in accordance with the prayer of the petition. (Paminsan *vs.* Costales et al., 28 Phil., 487, 489). As has been stated above, it is clearly alleged in the dismissed complaint that the plaintiff-appellant authorized Pedro Arong, deceased husband of herein defendant-appellee, to answer in her name in the cadastral proceedings. Furthermore, it is alleged in the complaint that Pedro Arong, without the knowledge and consent of the plaintiff-appellant, filed an answer claiming the lots in question to be exclusively his own property to the prejudice of the plaintiff and of his seven sisters, his co-heirs. It is also alleged in paragraph 4 of the dismissed complaint that the plaintiff-appellant is the absolute owner and in actual possession of the lots in question from time immemorial, adversely, openly and continuously and there is nothing in the complaint to show that title to such properties have been transferred to an innocent purchaser for value. Finally, it is asked in this prayer that the defendant be compelled to execute in favor of the plaintiff-appellee the corresponding and proper deed of transfer of the lots in question.

In a similar case our Supreme Court said:

"But once the relation and the breach of trust on the part of the fiduciary is thus established, there is no reason, neither practical nor legal, why he should not be compelled to make such reparation as may lie within his power for the injury caused by his wrong, and as long as the land stands registered in the name of the party who is guilty of the breach of trust and no rights of innocent third parties are adversely affected, there can be no reason why such reparation should not, in the proper case, take the form of a conveyance or transfer of the title to the *cestui que trust*. No reason of public policy demands that a person guilty of fraud or breach of trust be permitted to use his certificate of title as a shield against the consequences of his own wrong." (Severino *vs.* Severino, 44 Phil., 343, 357.)

In this same case the Supreme Court cited with approval the cases of Consunji *vs.* Tison, 15 Phil., 81, and Uy Aloc *vs.* Cho Jan Ling, 19 Phil., 202, wherein the same doctrine was enunciated and the proper procedure to be taken in such cases was indicated.

From these doctrines of the Supreme Court we see that although the period of one year from the issuance of the decree by the court has already elapsed, the true owner may still file an action to compel one who has registered the land in his own name in violation of a trust given him, to reconvey the land to the true owner.

The plaintiff, having alleged in her complaint, that the deceased Pedro Arong, was ordered by her to appear in her representation in the cadastral proceedings and that the lot decreed in favor of said deceased is still registered in his name, we believe that the plaintiff should be allowed to prove her allegations which if true would constitute an action against the estate of the deceased Pedro Arong as represented by the defendant-appellee.

In view of the foregoing, the order appealed from is hereby set aside and the case should be remanded to the court of origin for trial on its merits. So ordered.

Endencia and *Felix, JJ.*, concur.

Order appealed from set aside; case remanded to court of origin with instruction.

[No. 3448–R. January 25, 1950]

JOAQUIN E. CHIPECO, plaintiff and appellant, *vs.* MANUEL PUA CHUA ENG ET AL., defendants and appellees

EVIDENCE; NOTARIAL DOCUMENT, PROBATIVE VALUE OF; QUALITY OF EVIDENCE REQUIRED TO OFFSET IT; CASE AT BAR.—A notarial document, such as the deed of sale in question, is a piece of evidence which cannot be offset or defeated by mere denial of any of the parties thereto, and that the one denying should produce strong evidence to overcome the probative value of such a document. The evidence denying the due execution of the said document is a negative circumstantial evidence based on mere improbabilities. The defendants could have disproved

the identity of the thumbmark of the vendor appearing therein by the production of any of vendor's residence certificates or his land certificates, but defendants did not do so alleging that they were all burned. Summing up, there is enough reason or ground for this court to believe that the preponderance of evidence tends to establish the due execution of the deed of sale in favor of the plaintiff. An error, therefore, has been committed by the lower court in holding otherwise.

APPEAL from a judgment of the Court of First Instance of Laguna. Yatco, J.

The facts are stated in the opinion of the court.

Joaquin E. Chipeco for appellant.
Juan A. Baes for appellee.

RODAS, *J.:*

One or two days before June 15, 1944, Epifanio P. Lucio and Dominador Matienzo offered to sell to the herein plaintiff-appellant Joaquin E. Chipeco at his house in Calamba, Laguna, three parcels of land for ₱15,000 registered in the name of Carlos M. Pua Cose who had given a written option to Bernardo Jucal to sell the same within thirty days. On June 15, said plaintiff, in company with Epifanio P. Lucido, Bernardo Jucal and Dominador Matienzo went to Sta. Cruz, Laguna, to examine the certificates of title covering said parcels of land in the office of the register of deeds and then proceeded to the store of the alleged vendor Carlos M. Pua Cose to close the deal. The vendor was made to sign the deed of sale, marked Exhibit A, which was already prepared. Carlos M. Pua Cose began to sign his name but as his hand was trembling, his son Manuel Pua Chua Eng, one of the defendants advised his father to thumbmark the document instead of signing it for he might spoil the same, and the latter did so with the help of his son. Matienzo suggested that Manuel Pua Chua Eng be made to sign the document as a witness but the latter refused to do so alleging that it was not necessary. Bernardo Jucal and one Santiago Fernandez signed as witnesses in the presence of the buyer Chipeco, Epifanio P. Lucido and Dominador Matienzo. After the execution of the deed the sum of ₱16,000 was paid to the vendor who, together with his son Manuel, helped in the counting of the money, consisting of Japanese war notes, although only ₱15,000 appears to be as the purchase price in said document, because the difference of ₱1,000 was to be paid to the agents who negotiated the sale. When demand was made for the delivery of the certificates of title covering the parcels of land sold, the vendor informed the buyer that said certificates of title were looted in Sta. Cruz, Laguna, in the early part of the Japanese occupation. In lieu of the missing certificates of title, Jucal filed a motion praying for the issuance of

new owner's duplicates of the same, but due to the fact that at the time there was scarcity of forms for original and transfer certificates of title the buyer failed to secure the owner's duplicates prayed for in the motion.

From the date of the sale the buyer took possession of the land and enjoyed the fruits thereof as owner without being interrupted by the vendor, or by his sons, the defendants. On March 12, 1947, or nearly three years after the sale, Chipeco filed a petition (Exhibit 1) in the Court of First Instance of Laguna for the reconstitution of the missing certificates of title, to wit; transfer certificate of title No. 6750 and original certificate of title No. 1874, registered in the name of Carlos M. Pua Cose, alleging that the owner's duplicates of said certificates of title which were delivered to him upon the execution of the deed of conveyance in his favor were either burned or destroyed in his house in Calamba, Laguna, on or about February 12, 1945, as a result of military operations undertaken by the liberating forces, to which opposition was presented by the defendants on the ground that the alleged missing certificates of title were in their possession, and that the so-called deed of sale in favor of the plaintiff was a forgery, for their father had not executed the same, and hence the filing of the complaint on November 29, 1947, praying that the defendants be compelled to surrender the owner's duplicates of transfer certificate of title No. 6750 and original certificate of title No. 1874 to enable the plaintiff to register the deed of sale executed in his favor of the parcels of land described in said certificates of title by the holder thereof and to enjoin and restrain said defendants from asserting their supposed right to said parcels of land.

On the trial of the case, plaintiff Joaquin E. Chipeco and Epifanio P. Lucido testified that the deed of sale, Exhibit A, was executed by Carlos M. Pua Cose in the manner hereinabove set forth, but both did not know personally the vendor and had not seen him prior to the date of the execution of Exhibit A. Dominador Matienzo, however, who had witnessed the execution of said document as above stated testified that he knew personally the vendor Carlos M. Pua Cose for a long time as a copra merchant and that he was the same one who executed Exhibit A; that said vendor first tried to sign said deed with the fountain pen of Jucal but his son Manuel whom he likewise knew, advised his father to thumbmark the document instead of signing the same for he might spoil it because his hands were trembling and so did the vendor; that he suggested that Manuel Pua Chua Eng, the son of the vendor, be requested to sign the document as a witness but Manuel refused to do so on the ground that it was not necessary.

It should be stated that before the trial commenced, plaintiff himself who is an attorney moved for the postponement of the hearing on the ground that one of his principal witnesses, Bernardo Jucal, could not appear on that date, March 16, 1948, as shown in his letter which Chipeco exhibited to the court because he had a previous appointment at Camp Murphy where he was going to represent a client named Josefa Manalo. Said motion was denied. At the end of the trial and before closing his evidence, Attorney Añonuevo, for the plaintiff, reiterated the motion for postponenment on the same ground but it was again denied, although the case was postponed to March 18, 1948 for the presentation of evidence by the defendants.

The first witness for the defendants was Felicisimo San Luis, the notary public before whom Exhibit A was acknowledged on June 15, 1944 in Sta. Cruz, Laguna. Said witness testified that the document was brought to his office already prepared; that as far as he could remember said document was signed in his office in the presence of Chipeco, Jucal, Fernandez and a Chinaman, the vendor, who was introduced to him by Jucal; that after reading the document to the vendor in Tagalog and having been informed by the latter that he knew Tagalog and understood its contents he asked him to sign the document; that according to his recollection the vendor did not know how to sign and Jucal helped the Chinaman affix his thumbmark on top of his name which was already typewritten; that he did not know personally Carlos M. Pua Cose and that the one who appeard before him as vendor and who affixed his thumbmark to Exhibit A, according to his recollection, was a person of middle age, between 40 and 50 years; that he did not remember whether the vendor was wearing eye-glasses; that the first time he saw the vendor was when he appeared to sign and ratify Exhibit A before him; that he required the Chinaman to produce his residence certificate in which he saw written the name of Carlos M. Pua Cose, but he does not remember whether said residence certificate was signed or thumbmarked.

The next witness for the defense is one Norberto Medel who testified to the effect that he knew Carlos M. Pua Cose very well and for a long time as a copra merchant and that he also knew that Carlos M. Pua Cose could speak Tagalog and Spanish and that he could write his name and in fact Carlos M. Pua Cose was one of his bondsmen in criminal case No. 4543 of the Court of First Instance of Laguna in which he was one of the accused for robbery, as it so appears in Exhibit 5, where Carlos M. Pua Cose signed.

The third witness for the defense is the defendant Manuel Pua Chua Eng who testified that in 1944 he was

living in barrio San Jose, Sta. Cruz, Laguna, about six and a half kilometers from the *poblacion,* where his father was living at Regidor Street. This witness denied the testimony of Dominador Matienzo concerning his alleged presence and participation in the signing and execution of Exhibit A, as well as in the counting of the sum of ₱15,000 and that he had never witnessed in the month of June, 1944, the alleged execution by his father of the deed of sale of his property, for, in fact, during that time he seldom went to the *poblacion* and if he did, he stayed only for a short time. He stated that his father knew how to write and to speak Tagalog and Spanish, having stayed in the Philippines since the age of 18 or 19 years; that his father's *Tua Lee* (landing certificate) was burned and for this reason he could not produce the thumbmark of his father; that he does not remember his father ever thumbmarking any document; that he signed his name either in Chinese characters or in Roman characters. He admitted that his house in Sta. Cruz, Laguna, was looted in 1942 by the Japanese and during a fire some of the documents of his father were burned but the important ones were not, such as the certificates of title.

The fourth and last witness was Felipe Pua Siu San, the other defendant and son of the deceased Carlos M. Pua Cose, who stated that his father died on April 17, 1947, but before said date or to be more exact, in the month of September, 1946, his father delivered to him certificates of title marked Exhibits 2 and 3, being respectively, transfer certificate of title No. 6750 and original certificate of title No. 1874 together with the plans of the land in question marked Exhibits 6 and 6–A; that they were delivered to him, according to his father, in order that when peace came he could make use of them; that he did not go to see the lands after liberation because of the chaotic conditions then obtaining at the place.

The first error assigned is the refusal of the lower court to postpone the hearing of the case notwithstanding the repeated motions to that effect made by the plaintiff on the very day set for the hearing of this case. The record of the case shows that previous postponement had already been granted on condition that no further postponement would be asked. Section 5, Rule 31 of the Rules of Court provides that "the motion to postpone a trial on the ground of absence of evidence can be granted only by an affidavit showing the materiality of evidence expected to be obtained and that due diligence has been used to procure it." Plaintiff failed to comply with the above-quoted provisions. Inasmuch as the matter of adjournments and postponements of trials lies generally within the discretion of courts, the denial of the motion by the lower court in this case, in view of the failure of the plaintiff

to comply with the above-quoted provisions, and the condition imposed by the trial court in the granting of the first postponement, seems to be within the sound discretion of the court and hence does not constitute an error.

The second error assigned is the finding to the effect that the thumbmark appearing in Exhibit A is not the genuine thumbmark of the vendor and the failure of the trial court to hold that the due execution of said document was established by preponderance of evidence.

The evidence for the plaintiff, as above set forth, with regard to the execution of Exhibit A, consists of the testimony of the plaintiff himself to the effect that the vendor Carlos M. Pua Cose thumbmarked the document, corroborated by Epifanio P. Lucido who testified to the same effect. These two witnesses, however, stated that they did not know or see Carlos M. Pua Cose except on the day of the execution of the deed. Dominador Matienzo who also testified to the same effect added that the vendor, whom he knew very well for a long time, at first tried to sign his name with the fountain pen of Bernardo Jucal but his son Manuel advised him to just thumbmark the document because the trembling of his hands might spoil it.

The evidence for the defense consists of the testimony of Manuel Pua Chua Eng who denied having been present in the execution of Exhibit A and stated that his father Carlos M. Pua Cose could not have been the one who thumbmarked Exhibit A because the latter had long been in the Philippines, knew how to speak Spanish and Tagalog and could very well write his name or sign it with Roman characters, and on the further ground that the two certificates of title covering the parcels of land alleged to have been sold to the plaintiff were never lost or destroyed and had always been in the possession of his father and in fact has produced them as Exhibits 2 and 3. The fact that Carlos M. Pua Cose knew how to speak Spanish and Tagalog and could sign his name has also been testified to by the other witness Norberto Medel. The notary public before whom the document was acknowledged, testifying for the defense, stated that the document Exhibit A was brought to his office already prepared; that as far as he remembered said document was signed in his office and that the vendor, a Chinaman, was introduced to him by Bernardo Jucal; that according to his recollection, the vendor told him that he did not know how to sign and Bernardo Jucal helped him affix his thumbmark to the document; that he did not know personally Carlos M. Pua Cose, the supposed vendor and only saw him on the day of the execution of the deed; that said vendor appeared to be a person of middle age, between 40 and 50 years; that he required the Chinaman to produce his residence

certificate in which he saw the name Carlos M. Pua Cose written but does not remember whether said residence certificate was signed or thumbmarked by Carlos M. Pua Cose.

In the case of Sy Tiangco *vs.* Pablo and Apao, 59 Phil., 119, the following doctrine was laid down:

"*Public Document; Execution; Denial of Alleged Signer; Burden of Proof.*—Plaintiff's attorneys vigorously contend that when the plaintiff denied having signed the deed, it was incumbent upon the defendants to call the witnesses thereto. The execution of a document that has been ratified before a notary public cannot be disproved by the mere denial of the alleged signer. No inference unfavorable to the defendants arises from their failure to call the subscribing witnesses."

We quote the following from the case of El Hogar Filipino *vs.* Olviga, 60 Phil., 18, 20, 21:

"The appealed judgment is based on two grounds, to wit: (1) That the deed of sale alleged to have been executed by Timoteo Olviga in favor of Genaro T. Tabien is false and fictitious and (2) that transfer certificate of title No. 5261, which was issued in favor of the plaintiff, cannot prevail over transfer certificate of title No. 5617 issued in the name of the defendant spouses Bonifacio Perez and Irinea Olviga.

"A careful examination of the evidence presented at the trial convinces this court that the said deed of sale is not fictitious but genuine. Only Timoteo Olviga and his son Severino testified in support of its falsity. The former's testimony is contained in an affidavit prepared *ex parte*, which was admitted by the court merely because it was not objected to upon presentation. Its admission under such circumstances did not in the least give it a greater evidentiary value than it should have under the well recognized rules of evidence. In said affidavit Timoteo asserted that he did not sign the deed of sale in question, that the signature thereon is not his, and that he was not even informed of the contents thereof. His son Severino confined himself to testifying that the signature in his father's name appearing on the said instrument is not his father's because it does not look like his real signature.

"A brief analysis of such evidence will show how insufficient it is to overcome or detract from the evidentiary force of the public instrument relating to the transfer made by Timoteo in favor of Genaro T. Tabien. It should be borne in mind that said public instrument was signed in the presence of two instrumental witnesses and appears to have been ratified by Timoteo before a notary public. If the biased and interested testimony of a grantor and the vague and uncertain testimony of his son are deemed sufficient to overcome a public instrument drawn up with all the formalities prescribed by the law then there will have been established a very dangerous doctrine which would throw wide open the doors to fraud."

In the case of Enrile and Villaverde *vs.* Roberto and de los Santos, 61 Phil., 599, 603, 604, we quote the following:

"According to the evidence for the defendants, Exhibit 2, the document in question, was executed in the house of the defendants by Juana Roberto and Maximo Villaverde. The two instrumental

witnesses and the notary public testified to the due execution of the document and the payment of the consideration in their presence. They testified that Juana Roberto signed Exhibit 2 by placing her finger print thereon and Maximo Villaverde by writing his name under that of his wife. It will be observed that Exhibit R, the deed from Anastacio Roberto to Juana Roberto on January 19, 1927, also bears the finger print of Juana Roberto. No attempt was made to show that the finger print on Exhibit 2 is different from that on Exhibit R. Maximo Villaverde testified that the signatures at the foot of Exhibit 2 and in the left margin purporting to be his were not his signatures, but that they looked like his signature. After comparing the questioned signatures in Exhibit 2 with the signature of Maximo Villaverde in Exhibit R, Exhibit S, and Exhibit 13, we are satisfied that the questioned signatures in Exhibit 2 are the genuine signatures of Maximo Villaverde. The trial judge pointed out certain differences between the questioned signatures in Exhibit 2 and the admittedly genuine signatures of Maximo Villaverde, especially the fact that in the signature at the foot of Exhibit 2, the first name reads 'Masio', while in the authentic signatures it reads 'Masimo' or 'Masixmo'. The fact is, however, that in the left margin of the second page of Exhibit 2 the first name is written as "Maxino', and in Exhibit S, which was written in court, the first name is written in the same way except that the 'i' is not dotted. It is apparent that Maximo Villaverde is illiterate and barely able to write his name at all. We find no such dissimilarities between the questioned signatures and the genuine ones that justify the finding that they were not written by the same person, especially in view of the clear and convincing testimony of the instrumental witnesses and the notary public, which stands unimpeached."

In the doctrines laid down in the above three cases cited by appellant in his brief and which we believe to be applicable to the instant case, it has been held in fact that a notarial document, such as Exhibit A, is a piece of evidence which cannot be offset or defeated by mere denial of any of the parties thereto, and that the one denying should produce strong evidence to overcome the probative value of such a document. In the instant case, however, it is not the vendor himself Carlos M. Pua Cose who denied the due execution of Exhibit A but only his son Manuel Pua Chua Eng on the ground of mere improbability that his father, knowing how to write, could not have executed the document by affixing thereto his thumbmark, and because of the fact that the certificates of title covering the lands sold to the plaintiff were not looted, as alleged by the latter, but were in possession of the vendor at the time of the execution and two years later were delivered to his son Felipe Pua Siu San, which is indicative of the improbability of the execution of Exhibit A. It has been established, however, that the house of the vendor, Carlos M. Pua Cose, was looted by the Japanese in 1942, as alleged by plaintiff, according to Manuel Pua Chua Eng himself. It has also been established by the evidence for the defense that the defendant Manuel Pua Chua Eng, from the time the Japanese occupied

Laguna, moved to a barrio because he was wanted by the Japanese. It might be possible that in moving to the barrio said defendant had taken with him the important papers of his father and the latter finding the certificates of title of the land missing, believed in good faith that same were part of his things looted in 1942. The evidence, therefore, denying the due execution of the document, Exhibit A, is a negative circumstantial evidence based on mere improbabilities. The testimony of the notary public which has failed to identify the party alleged to be the vendor is purely a question of failure of memory due to the fact that he did not know personally Carlos M. Pua Cose and, therefore, could not say that he was the very one who signed the same. He was sure, however, that he asked the vendor to produce his residence certificate and that the one produced was in the name of Carlos M. Pua Cose. The defendants could have disproved the identity of the thumbmark of the vendor appearing on Exhibit A by the production of any of Carlos M. Pua Cose's residence certificates or his *Tua Lee* (landing certificate), but defendants did not do so alleging that they were all burned. They did not, however, explain why the *Tua Lee* and other personal papers of their father were burned while the certificates of title were not. There was no evidence that defendants tried to secure from the municipality of Sta. Cruz, Laguna, of which their father had been a resident for a long time, a copy of any *cedula* certificates issued to him in any of the years during which he had been residing therein to disprove satisfactorily that the thumbmark appearing on Exhibit A is not his.

The fact that the plaintiff tried to secure the reconstitution of the certificates of title covering the lands sold to him, alleging that the owner's duplicates which were delivered to him by Carlos M. Pua Cose were either burned or destroyed in his house in February, 1945, which is contrary to the truth, as the plaintiff well knew, may tend to prove that the plaintiff had been acting in bad baith. This fact, however, is offset by the failure of the defendants to appear before the court of Laguna wherein said motion was filed while their father was alive and could have denied the due execution of Exhibit A or the sale in favor of the plaintiff. Said motion was filed on March 12, 1947, while Carlos M. Pua Cose died on April 17, or over a month after the filing of the motion. This failure of the defendants to file their opposition to the motion while their father was alive which was not explained at all, is also indicative of the fact that they were avoiding the discovery of the truth from their father. Again their failure to take possession of the land during the period of three years or to make any effort to that effect during the time plaintiff has been possessing the same and enjoying the fruits there-

of, is also indicative of knowledge on their part of the actual sale of said parcels of land to the plaintiff.

Summing up, there is enough reason or ground for this court to believe that the preponderance of evidence tends to establish the due execution of Exhibit A in favor of the plaintiff. An error, therefore, has been committed by the lower court in holding otherwise.

Wherefore, reversing the judgment appealed from, the court holds that the deed of sale, Exhibit A, in favor of the plaintiff was duly executed by the vendor Carlos M. Pua Cose and hence hereby orders the defendants to surrender transfer certificate of title No. 6750 and original certificate of title No. 1874 to the appellant, with costs, in both instances, against the appellees.

Jugo, Pres. J., and *De la Rosa, J.*, concur.

Judgment reversed.

[No. 4356-R. January 25, 1950]

CALIXTO ALONZO, petitioner, *vs.* Hon. ANTONIO BELMONTE ET AL., respondents

PLEADING AND PRACTICE; APPEAL, PERIOD OF; ABSENCE OF EVIDENCE AS TO ACTUAL DATE OF RECEIPT OF NOTICE DENYING MOTION FOR NEW TRIAL; HOW PERIOD IS COMPUTED.—In the absence of evidence as to the actual date when the notice denying motion for new trial was received, the lower court was correct in computing the appeal period from the fifth day after notice was sent (sec. 8, Rule 27). The case falls squarely within the doctrine of the Supreme Court in Enriquez and Ponseca *vs.* Judge of the Court of First Instance of Bataan, 45 Off. Gaz., No. 3, pp. 1250, 1251. (Islas *vs.* Platon, 47 Phil., 162; Yangco *vs.* Millan, 57 Phil., 761; and Palisoc *vs.* Locsin, 57 Phil., 324.)

ORIGINAL ACTION in the Court of Appeals. Mandamus.

The facts are stated in the opinion of the Court.

Federico Diaz, Agripino P. Santos and *Agripino L. Rabago* for petitioner.

Jose E. Evangelista for respondents.

REYES, J. B. L., *J.*:

This is a petition to compel the respondent judge to approve and certify to the Court of Appeals the record on appeal tendered by the petitioner in civil case No. 106 of the Court of First Instance of Ilocos Norte. The record on appeal was refused approval by the lower court. The reasons for the disapproval of the lower court appear in its order of February 18, 1949, as follows:

"It appears from the record that the decision was rendered on July 8, 1948, a copy of which was sent by registered mail on July 24, 1948 to Atty. Agripino P. Santos for the defendant by the clerk of court. It appears from the affidavit of Alberto Agcaoili, Registry Clerk of the Bureau of Posts, that he sent on July 24, the first registry notice to the said attorney; that the latter did not claim it within five days therefrom, but said attorney

received the registered copy on August 18th, according to card Exhibit A.

"A motion for new trial was filed on August 26, 1948; that it was denied on October 27, 1948, copy of the order of denial was sent by registered mail on November 17, 1948 to the said attorney, and on the same date the first registry notice was sent to the same attorney by the Registry Clerk of the Bureau of Posts. He did not get the registered mail within five days from notice, but he received, according to him, the copy of the denial on December 1st, 1948.

"Notice of appeal was filed on December 1st, 1948. Appeal bond was also filed on the same date. But the record on appeal was filed on December 6th, 1948.

"According to section 8 of Rule 27 of the Rules of Court, service by registered mail is complete upon actual receipt by the addressee, but if he fails to claim his mail from the post office within five days from the date of the first notice by the postmaster, the service shall take effect at the expiration of such time.

"Pursuant to that provision, attorney for the defendant, Mr. Agripino P. Santos, is considered to have received the copy of the decision on July 30th. And on August 29th was the last day for presenting an appeal.

"Motion for new trial was filed on August 26th. Hence, three days only remained from the 29 days.

"Attorney for the defendant received copy of the order denying the motion for new trial on November 23rd, and when he filed, on December 1st, notice of appeal, seven days had already elapsed, and the time to present notice of appeal had already expired, the last day of which was November 26th. When he filed on December 6th, the record on appeal, twelve (12) days had already elapsed; and, therefore, out of the period of thirty days for the perfection of appeal."

No competent evidence has been presented to us to show that the petitioner's counsel did not receive the notices of the postmaster on the day that they were sent; the mere fact that, according to the affidavit of the postal clerk submitted to the lower court in the petitioner's motion for reconsideration, the petitioner's counsel received the registered letters containing decision of the lower court as well as the notice of the denial of the motion for new trial on August 18, 1948 and December 1, 1948, respectively, is no proof that the notices sent by the registry section of the Laoag post office were received on those dates. The point is too obvious to need elaboration.

The applicable law is undoutedly the last part of section 8, Rule 27 of the Rules of Court, as follows:

"SEC. 8. Completeness of service.—Personal service is complete upon actual delivery. Service by mail is complete upon the expiration of five days after mailing, unless the court otherwise provides. Service by registered mail is complete upon actual receipt by the addressee; but if he fails to claim his mail from the post office within five days from the date of first notice of the postmaster, the service shall take effect at the expiration of such time."

In the absence of evidence as to the actual date when the notice was received, the lower court was correct in computing the appeal period from the fifth day after

the notice was sent. The case falls squarely within the doctrine of the Supreme Court in Enriquez and Ponseca *vs.* Judge of the Court of First Instance of Bataan, 45 Off. Gaz., No. 3, pp. 1250, 1251, wherein the high court stated the following:

"Petitioners' contentions are without merit. The allegation that petitioners' former counsel never received the postal notices cannot prevail over the positive statement of the superintendent of the Manila Post Office to the effect that three notices were sent to him, and such statement is forfeited by the legal presumption that official duty was regularly performed. It is noteworthy that the registered letter of the Clerk of the Court of First Instance of Bataan containing a copy of the order in question was sent to the very address given by petitioners' attorney in the petition for intervention, and there is no showing that the clerk of court was ever notified by him of any change of address. The excuse that the attorney did not stay in one place permanently, cannot be accepted, inasmuch as an attorney owes it to himself and to his clients to invariably adopt a system whereby he can be sure of receiving promptly all judicial notices during his absence from the address of record.

* * * * * * *

"Under section 8 of Rule 27 of the Rules of Court, 'Service by registered mail is complete upon actual receipt by the addressee; but if he fails to claim his mail from the post office within five days from the date of the first notice of the postmaster, the service shall take effect at the expiration of such time.' There is no reason whatsoever why this rule should not be given effect in this case. Accordingly, the petitioners must be deemed to have been served with notice of the order in question five days after October 28, 1946, or on November 3, 1946. It being admitted that the record on appeal was filed on January 28, 1947, the same was clearly filed beyond the 30-day period from November 3, 1946."

This doctrine is also supported by the decisions in Islas *vs.* Platon, 47 Phil., 162; Yangco *vs.* Millan, 57 Phil., 761; and Palisoc *vs.* Locsin, 57 Phil., 324.

It appearing that the decision of the lower court had become final, because the notice of appeal, the appeal bond, and the record on appeal were filed several days after the lapse of the 30-day appeal period, as correctly shown in the order of February 18, 1949, heretofore quoted, the petition is dismissed, with costs against the petitioner. So ordered.

Gutierrez David and *Ocampo, JJ.*, concur.

Petition is dismissed with costs.

[No. 5313-R. Enero 27, 1950]

MARTINA PATERNO y otros, recurrentes, *contra* LIMCHAY SENG, y otros, recurridos

1. CERTIORARI; DESAHUCIO; EJECUCIÓN; FIANZA SUSPENSIVA DE EJECUCIÓN; NO ES APLICABLE EL ARTÍCULO 2, REGLA 39 DE LOS REGLAMENTOS DE LOS TRIBUNALES EN CASOS DE DESAHUCIO.—El Art. 2 de la Regla 39 de los Reglamentos de los Tribunales, que autoriza la expedición de un mandamiento de ejecución

antes de expirar el tiempo para apelar en causas civiles ordinarias, a menos que se preste una fianza suspensiva de ejecución, no es aplicable en casos de desahucio, detentación o retención indebida de inmueble, porque en estos la garantia que se da, mediante la fianza suspensiva de ejecución, esta provista en los articulos 8 y 9 de la Regla 72, y si no se preste, el remedio inmediato es la expedición del mandamiento de ejecución de la sentencia, a solicitud del demandante, que es lo que se ha hecho en el caso de autos, como se ve en el parrafo tercero de la "Motion to Dismiss Appeal", en el que se hace constar que la finca ya está en posesión de los recurrentes por haberse expedido por el Juzgado Municipal la correspondiente ejecución de su sentencia. Si esto es asi, si ya se ha expedido mandamiento de ejecución, no procede que se exija de los recurridos presten la cerrespondiente fianza, sobre todo porque la sentencia contra la cual apelan ya se ha ejecutado o esta en vias de ejecución.

2. ID.; ID.; ID.; ID.; ARTICULO 9, REGLA 72 DE LOS REGLAMENTOS DE LOS TRIBUNALES; CASO DE AUTOS.—El articulo 9 de la Regla 72 de los Reglamentos de los Tribunales prceptua que la ejecución de la sentencia del Juzgado de Primera Instancia en casos de desahucio, detentación o retención indebida de la posesión de inmuebles no se suspendera con la apelación del demandado, a menos que éste pague al demandante o al Tribunal de Apelación las cantidades a que se refiere el articulo 8 de la misma regla, mas no provee que el demandado apelante en tal caso preste una fianza suspensiva de ejecución, si bien que cuando esta no se presta en el juzgado de paz o municipal de origen de la causa debe seguirse la regla sentada por el Tribunal Supremo en Romero *vs.* Hon. Potenciano Pecson, et al. (Vol. XIV, No. 8, August 31, 1949, The Lawyers Journal, p. 439) En el caso de autos, en que se ha expedido el correspondiente mandamiento de ejecución de la sentencia del juzgado municipal de origen y en que la posesión de la propiedad en litigio ya esta entregada a los recurrentes, huelga la prestación de una fianza suspensiva de ejecución.

JUICIO ORIGINAL en el Tribunal de Apelaciones. *Certiorari.*

Los hechos aparecen relacionados en la decisión del Tribunal.

Sr. L. T. Castillo en representación de los recurrentes.

D. Celestino L. de Dios en representación de los recurridos.

DE LA ROSA, *M.:*

Los recurrentes Martina Paterno, Feliciano Paterno, Adelaida Paterno, Maria Paterno, Ramon Paterno, Jose L. Paterno, Carmen Paterno, Isaac Lacson, Maximo Paterno, Dolores Paterno, Jose Ma. Gabriel y Carmen Gabriel piden, en su solicitud de certiorari de autos, se ordene al Juez recurrido a fijar en la cantidad de ₱27,000 la fianza suspensiva de ejecución (*supersedeas bond*) que los recurridos Lim Chay Seng, Lim Kok Seng, Go Guan y Li Gui deben prestar en las causas civiles Nos. 6437 y 6585 del Juzgado de Primera Instancia de esta Ciudad de Manila.

En 30 de junio de 1948, Martina Paterno et al, presentaron en el Juzgado Municipal de esta Ciudad de Manila

una demanda por desahucio y cobro de alquileres contra Lim Chay Seng, Lim Kok Seng, Go Guan y Li Gui, que entonces ocupaban como arrendatarios la finca comprendida en el certificado de titulo No. 7768, ubicada en extremo de la calle Escolta que hace canto con la Plaza de Moraga, Manila. Sentenciados estos a desalojarla y a pagar sus alquileres desde el primero de enero de 1948 hasta que la evacuen elevaron la causa en apelación al Juzgado de Primera Instancia de esta cuidad, registrandose alli con el No. 6437. Tres semanas después de su registro, Lim Chay Seng, Lim Kok Seng, Go Guan y Li Gui instituyeron la causa No. 6585 contra Martina Paterno et al., para mantener en vigor el contrato de arrendamiento de la expresada finca. Vistas ambas causas conjuntamente, se pronunció esta sentencia:

"In view of the foregoing considerations, the court finds that the owners and lessors of the property in question are entitled to the possession thereof, the lease contract having been validly terminated pursuant to its very terms and conditions. The defendants in civil case No. 6437, Lim Chay Seng, Lim Kok Seng, Go Guan, and Li Gui, are therefore hereby ordered to vacate the land belonging to the plaintiffs in said case, located on the corner of Escolta and P. Moraga St., Manila, and covered by certificate of title No. 7768, and to pay to the plaintiffs the monthly rental of ₱3,000 from January 1 to October 6, 1948, when the municipal court issued the order for the immediate ejectment of the lessees. The plaintiffs are hereby absolved from the defendants' counterclaim in said civil case No. 6437 the same not having been proven; and said plaintiffs, as defendants in civil case No. 6585 are also absolved from the complaint filed therein, which is hereby also dismissed. No special pronoucement is made as to costs."

Lim Chay Seng, Lim Kok Seng, Go Guan y Li Gui apelan de este fallo, archivando al efecto los correspondientes aviso, expediente y fianza de apelación. Antes de que se aprobara el expediente de apelación, Martina Paterno et al, presentaron el Anexo 1 de la contestación de los recurridos, titulado "Motion to Dismiss Appeal", en el que piden se requiera a los apelantes que presten una fianza suspensiva de ejecución en la cantidad de ₱27,000 o se sobresea la apelación. "El parrafo tercero de esta moción textualmente dice:

"3. That during the pendency of civil case 6437 before thls Honorable Court the defendants in this case voluntarily vacated the premises which was the ruins in the premises in question as they know that there was already a writ of execution issued against them by the Municipal Court of the City of Manila, and plaintiffs, therefore, assumed possession of the premises as appearing in the decision of this Honorable Court."

Proveyendo esta moción, el Juzgado dispuso:

"ORDER

The petition for the approval of the Record on Appeal, filed by Lim Chay Seng, et als., defendants in civil case No. 6437 and plaintiffs in civil case No. 6585, respectively is hereby held in

abeyance pending the filing by them of a supersedeas bond in the amount of ₱27,000 pursuant to Rule 39, section 2 of the Rules of Court. Ten (10) days from receipt of this order are hereby given petitioners to file said supersedeas bond.

"So ordered."

"Manila, Philippines, November 1, 1949."

(Annex B)

Pedida reconsideracion de esta orden se dicto esta esta otro:

"ORDER

"The order of this court dated November 1, 1949, directing defendants in civil case No. 6437 and plaintiffs in civil case No. 6585 respectively to file a supersedeas bond in the sum of ₱27,000 is hereby reconsidered, in the sense that the amount of the supersedeas bond to be filed by them is fixed at ₱3,000 instead of ₱27,000, it appearing from the records that the building they were leasing was completely burned the latter part of January, 1948, and it appearing further that right after the burning of said building, plaintiffs and defendants, respectively in civil case No. 6437 and 6585 offered to lease and actually succeeded in leasing the land to other parties, construction of the new building now standing on same lot by the new lessee having began in June, 1948.

"So ordered.

"Manila, Philippines, November 26, 1949."

(Annex C)

La fianza suspensiva de ejecución que de acuerdo con la Regla 39, Articulo 2, de los reglamentos de los Tribunales se fijó por el Juzgado es la cantidad de ₱27,000 era para responder de la sentencia en la causa No. 6437 por desahucio, porque la causa No. 6585 en la que Lim Chay Seng, Lim Kok Seng, Go Guan y Li Gui eran demandantes se ha sobreseido.

El Articulo 2 de la Regla 39 de los Reglamentos, que autoriza la expedición de un mandamiento de ejecución antes de expirar el tiempo para apelar en causas civiles ordinarias, a menos que se preste una fianza suspensiva de ejecución, no es aplicable en casos de desahucio, detentación o retención indebida de inmuebles, porque en estos la garantia que se da, mediante la fianza suspensiva de ejecución, está provista en los Artículo 8 y 9 de la Regla 72 y si no se presta, el remedio inmediato es la expedición del mandamiento de ejecución de la sentencia, a solicitud del demandante, que es lo que se ha hecho en el caso de estos, como se ve en el parrafo tercero de la "Motion to Dismis Appeal", en el que se hace constar que la finca ya está en posesión de los recurrentes por haberse expedido por el Juzgado Municipal la correspondiente ejecución de su sentencia. Si esto es así, si ya se ha expedido mandamiento de ejecución, no procede que se exija de los recurridos Lim Seng Chang, Lim Kok Seng, Go Guan y Li Gui presten la correspondiente fianza, sobre todo porque la sentencia contra la cual apelan ya se ha ejecutado o esta no vias da ejecución.

El artículo 9 de la Regla 72 de los Reglamentos preceptua que la ejecución de la sentencia del juzgado de primera instancia en casos de desahucio, detentación o retención indebida de la posesión de inmuebles no se suspendera con la apelación del demandado, a menos que este pague al demandante o al Tribunal de Apelación las cantidades a que se refiere el Articulo 8 de la misma regla, mas no provee que el demandado apelante en tal caso preste una fianza suspensiva de ejecución, si bien que cuando esta no se presta en el Juzgado de Paz o Municipal de origen de la causa debe seguirse la regla sentada por el Tribunal Supremo en Romero *vs.* Hon. Potenciano Pecson, et al. (Vol. XIV, No. 8, August 21, 1949, The Lawyers Journal, p. 439) a saber:

"* * * But if no supersedeas bond had been filed with the inferior court or the rents or damages determined by the inferior court until the judgment of the court of first instance had not been paid, the defendant appellant must file a supersedeas bond to secure the payment of all the back rents or damages determined by the court of first instance, and also make the payment above referred to in said Sec. 9 in order to stay the execution of the judgment of the court of first instance. Otherwise, the defendant, by appealing, may continue in possession of the premises without paying or giving any guarantee or security for the payment of the rents or damages, due and upaid up to the renditicn of the final judgment of the appellate court, contrary to the rationale of the law relative to execution of the judgment in forcible entry and illegal detainer."

En el caso de autos, en que se ha expedido el correspondiente mandamiento de ejecución de la sentencia del juzgado municipal de origen y en que la posesión de la propiedad en litigio ya esta entregada a los recurrentes, huelga la prestación de una fianza suspensiva de ejecución.

Se sobresee el rcurso de autos. Asi se ordena.

Jugo y *Felix, M. M.*, están conformes.

Se sobresee el recurso.

[No. 2841–R. January 30, 1950]

LUZON BROKERAGE CO. INC., plaintiff and appellee, *vs.* MELECIO M. DOMINGO doing business under the firm name of "DOMINGO CONSTRUCTION & COMMERCIAL COMPANY," defendant and appellant.

1. EVIDENCE; ADMISSION IN THE COURSE OF AN ATTEMPT TO COMPROMISE RECEIVABLE AS EVIDENCE.—There being an unqualified and explicit admission of indebtedness in the agreement whereby the appellant conceded the claim of the appellee, said admission is receivable as evidence even though it occurred as a part of an attempt to compromise.
2. ID.; SELF-SERVING EVIDENCE; CARBON COPIES OF LETTERS OF DEMAND, NOT SELF-SERVING EVIDENCE.—Carbon copies of letters of demand sent to the defendant receipt of which was acknowledged, are not self-serving evidence.

APPEAL from a judgment of the Court of First Instance of Manila. De Leon, J.

The facts are stated in the opinion of the court.

Claro M. Recto for appellant.
Jose G. Macatangay for appellee.

GUTIERREZ DAVID, *J.:*

This is an appeal from the judgment of the Court of First Instance of Manila ordering the defendant Melecio M. Domingo, doing business under the business name of "Domingo Construction and Commercial Company," to pay unto plaintiff Luzon Brokerage Company, Inc., the sum of ₱3,793.44 with interests thereon at the rate of 12 per cent per annum from March 30, 1947 until payment is made plus the further sum equivalent to 10 per cent of said amount as attorney's fees, cost of collection and liquidated damages, and plus the costs of the suit. The aforementioned amount is the balance of the sum of ₱6,673.28 consisting of cash advances and brokerage charges in connection with certain goods which were cleared by the plaintiff from the customs house at Manila and delivered to the defendant at the latter's instance and request.

The facts of the case are aptly narrated in the decision of the lower court as follows:

"* * * it appears that sometime in February, 1947, the defendant, Melecio M. Domingo, then doing business under the business name of DOMINGO CONSTRUCTION AND COMMERCIAL COMPANY", engaged the services of the plaintiff as his customs broker for the purpose of clearing from the customs house at Manila a shipment of 1,200 cases of Canadian Herring which arrived in Manila on the *S.S. "Silverguava"* on or about February 1, 1947. At the time the defendant engaged the services of the plaintiff as his customs broker as aforesaid, the defendant did not tender to the plaintiff the necessary amounts to be paid for customs duties, arrastre, stamps and for bonded and customs storage charges due on the said shipment and requested the plaintiff to advance said amounts, promising at the same time that he would pay to the plaintiff all advances that the plaintiff might make in connection with his said shipment and all brokerage charges which may be due to the plaintiff, upon presentation of the corresponding bills for the said advances and brokerage charges.

Acting upon defendant's request above-mentioned, the plaintiff, upon previous payment of the corresponding customs duties, arrastre, bonded and customs storage charges, cleared from the customs house and delivered to the defendant his shipment of 1,200 cases of Canadian Herring. And after delivery to the defendant of the said goods, the plaintiff, as per agreement with the defendant, rendered unto the defendant its bills (Exhibits A and B) for advances and other brokerage charges in connection therewith, all amounting to ₱6,673.28. Of the said amount the defendant paid only the sum of ₱2,879.84, thereby leaving a balance of ₱3,793.44 which the defendant failed and refused, and still fails and refuses to pay to the plaintiff notwithstanding repeated demands for payment made by the plaintiff upon him and further notwithstanding defendant's repeated promises to pay."

The defendant alleges in his answer that the customs storage charges demanded by the plaintiff on the shipment in question were excessive and that the latter should have paid only ₱2 instead of ₱4 per ton per day.

On October 21, 1947 when this case was previously set for hearing, the parties in open court entered into an agreement of settlement (Exhibit G), wherein the defendant specifically recognized being indebted to the plaintiff in the sum of ₱3,794 which is the amount demanded in plaintiff's complaint. After the trial in the lower court the defendant filed an alternative motion for reconsideration or for re-opening of the case for the admission of further evidence, which, according to the appellant, included particularly certificates issued by the Terminal Warehousing to the effect that the appellee was required to pay only ₱1,748.24 for customs storage charges at the rate of ₱2 per ton per day for the goods subject matter of this case and not ₱4 per ton per day as claimed to have been paid by the plaintiff-appellee. Said alternative motion was denied.

The decision appealed from is now assailed on the ground that the trial court erred (1) in declaring as valid and an acceptance by the defendant-appellant of his liability, the agreement of settlement Exhibit G; (2) in upholding the verbal testimony of the biased witness Roman de la Dingco and the self-serving letters of demand, Exhibits C and D, in spite of the fact that the latter exhibits are inadmissible as evidence; (3) in denying the motion for reconsideration or re-opening of the case; and (4) by abusing its discretion in continuing with the hearing of the case and forcing the defendant-appellant to cross-examine the witness and to proceed with said hearing of the case despite the manifestations of the appellant that he could not do so as his counsel of record had requested for postponement on the ground that said counsel could not appear because his son was seriously ill in the hospital and on the further ground that the other principal witness of the appellant could not possibly appear on the day set for the hearing.

Under the first assignment of error it is claimed that the agreement of settlement, Exhibit G, having been executed by the appellant in an effort to buy peace, or to compromise, is not admissible in evidence. The record reveals that this agreement was executed by the parties in open court. It was dictated to the stenographer after the parties have agreed on its terms. Therein appears the following statement: "1. The defendant recognizes that he is indebted unto the plaintiff in the sum of of ₱3,794 the amount claimed in the complaint." As a condition of the agreement the appellant was given a period of one (1) year in which to pay his admitted indebtedness and that the payment was to be guaranteed by a bond. There be-

ing an unqualified and explicit admission of indebtedness in the agreement whereby the appellant conceded the claim of the appellee, said admission is receivable as evidence even though it occurred as a part of an attempt to compromise.

There is nothing to appellant's claim that the aforesaid settlement agreement is null and void for the reason that his consent thereto is vitiated by error, that is, that he entered into said agreement believing honestly and in good faith that the corresponding storage charges and other items were actually paid by the appellee. It appears from the record that although the aforesaid charges have not been actually paid for by the appellee, its payment has been guaranteed by a bond of importer or customs broker executed by the appellee and the Fidelity and Surety Co., of the Philippine Islands in favor of the Insular Collector of Customs, without which the shipment of the appellant would not have been released by the Bureau of Customs and would not have been delivered to the appellant. In other words, the appellee assumed responsibility for the payment of said charges and these were as good as paid, and that is why the shipment was released.

For the foregoing reasons the trial court committed no error in having received Exhibit G as an evidence of admission.

There is no argument of merit to the effect that Román de la Dingco was a biased witness or that the trial court erred in considering his testimony. The mere fact that De la Dingco was an employee of the plaintiff does not make him a biased witness. Exhibits C and D are not self-serving evidence. They are carbon copies of letters of demand sent to the defendant and its receipt is acknowledged in the letter Exhibit F of appellant. Hence the second assignment of error is not well taken.

The trial court correctly denied the motion for reconsideration or for re-opening the case for admission of further evidence. The evidence sought to be introduced was not newly discovered. It was known to the appellant before the trial of the case on November 25, 1947. There is no showing that even with the exercise of reasonable diligence, said evidence could not have been produced at the trial. Even if admitted, said evidence would not alter the result of the case. The charges which appellee paid according to Annex 1, in the amount of ₱1,748.24, were the bonded storage charges paid to the Terminal Warehousing. The customs storage charges due on the shipment in question at the rate of ₱4 per ton per day were payable to the Bureau of Customs and not to the Terminal Warehousing. According to the certification of the Commission of Customs the rate of ₱4 per ton per day was chargeable on the shipment under consideration in accordance with paragraph

XI of Customs Administrative Order No. 27, as amended by Customs Administrative Order No. 28, dated January 15, 1947. And, as already stated, the fact that the appellee had assumed the responsibility of paying the aforesaid customs storage charges they are as good as paid. The fact that they were not actually paid by the appellee would not in any way affect the outcome of the suit.

Under the fourth assignment of error appellant charges the lower court with abuse of discretion; of being prejudiced against him, whimsical and capricious; partial and arbitrary. Among others he accuses the trial court with abuse of discretion when it denied his motion to postpone the hearing on November 20, 1947 made during the course of the testimony of the witness Román de la Dingco. It appears that appellant arrived late at the court room and while witness for the appellee was testifying. The trial court asked the appellant if he wanted to cross-examine the witness. Appellant, instead, asked for the postponement of the hearing and his petition was denied. Then the court asked the appellant if he wanted to cross-examine the aforesaid witness; and when the former informed the court that he could not do it because he did not know the previous testimony of the witness, the trial court directed the court stenographer to read to the apellant the stenographic notes of the witness' testimony. This was done and the appellant proceeded to cross-examine the witness. True the court denied the appellant's motion for postponement made during the presentation of the evidence for the appellee on November 20, 1947, yet later on it ordered the postponement of the hearing for November 25, 1947 in order to give the appellant the opportunity of presenting his evidence. On the latter date appellant appeared with his counsel and presented his evidence.

After reviewing the records we find that the lower court committed none of the irregularities mentioned by the appellant. On the contrary, it appears that the trial court had been very considerate, patient and lenient to the appellant. Moreover, there is no showing in the record that appellant's petitions for postponement of hearing were justified or that he was deprived of his day in court. Hence the fourth assignment of error is also devoid of merit.

None of the errors assigned having been committed by the trial court, the judgment appealed from should be affirmed. It is, however, modified as to the amount to be paid by the appellant and the dates from which interests should accrue. It is admitted by the appellee that the amount of ₱1,758.24 for storage charges appearing in bills Exhibits A and B, through error, exceeds by ₱10 the amount actually paid therefor. Pursuant to the conditions appearing in Exhibits A and B, interest of 12 per cent per annum will be charged only after thirty days from the

presentation of the bills and that bill, Exhibit A, was rendered on March 25, 1947, and bill, Exhibit B, on April 29, 1947. Therefore, appellant should pay unto the appellee the sum of ₱3,783.44 with interest at 12 per cent per annum on the sum of ₱2,103.02 from April 26, 1947 and on the sum of ₱1,680.42 from May 30, 1947, until fully paid, plus the further sum equivalent to 10 per cent of ₱3,783.44 as attorney's fees, cost of collection and liquidated damages.

Thus modified, the judgment of the lower court is hereby affirmed in all other respects with costs against the appellant.

Reyes and *Ocampo, JJ.*, concur.

Judgment modified.

[No. 2817-R. January 31, 1950]

MAXIMA VALDEABELLA ET AL., plaintiffs and appellees, *vs.* LUZ MARQUEZ ET AL., defendants and appellants [1]

1. OBLIGATION AND CONTRACT; CREDITOR AND DEBTOR; PAYMENT IN JAPANESE MILITARY NOTES; INTIMIDATION; MERE KNOWLEDGE OF SEVERE PENALTIES IMPOSED REGARDING NON-ACCEPTANCE OF JAPANESE MILITARY NOTES, NOT INTIMIDATION.—Considering the fact that intimidation exists when one of the contracting parties is inspired with a reasonable and well grounded fear of suffering an *imminent* and *serious* injury to his person or property, or to the person or property of his spouse, descendants or ascendants, we hold that by the mere knowledge of the plaintiffs of the severe penalties imposed by the invaders of a violation of their proclamations or orders, regarding non-acceptance of military notes, which was common and applicable to all, and in the absence of direct acts showing the imminence or seriousness of such injury, intimidation does not exist. (Phil. Trust Co. *vs.* L. M. Araneta et al., G. R. No. L-2734, March 17, 1949.)

2. ID.; ID.; ID.; CURRENCY; STATUS OF THE LAW ON CURRENCY.—Plaintiff's contention that payment of the judgment should be in Philippine peso, pre-war currency of the Philippine Commonwealth Government is untenable. The status of the law on the question of currency is expressed in the following pronouncements: "A payment made by a debtor during the enemy occupation and accepted by the creditor, is valid and extinguishes the former's obligation." (Hilado *vs.* De la Costa, G. R. No. L-150, Apr. 30, 1949.) "The Japanese military notes had acquisitive power and was of legal currency at the time tender of payment and consignation was made * * *. Up to the present time, there is no legislative enactment denying recognition and effect to payments made for settling obligations matured during the ominous occupation of the Islands by the Japanese military forces." (Ocampo *vs.* Potenciano, CA-G.R. No. 182-R, Jan. 12, 1948). "The court's ruling that the repurchase of the lots should have been effected in Commonwealth

[1] See Resolution of the Supreme Court of December 12, 1950. Appeal by certiorari was dismissed, the questions raised are mainly factual and the case has no merit. (Justice Jugo took no part.)

currency, is bereft of reason and justice and is not the law. Japanese war notes were the only money in circulation in March, 1944. It seems to us extremely unjust and unreasonable to expect the administratrix at that time to repurchase the lots in other means of exchange." (Cunanan *vs.* R. Amparo and B. Soriano, G.R. No. L–1313, Feb. 16, 1948.) "But the obligation of a contract to pay money is to pay that which the law shall recognize as money when the payment is to be made." (Haw Pia *vs.* China Banking Corp., G.R. No. L–534, Apr. 9, 1948.) The Japanese military notes in circulation in the Philippines during the occupation, not only were then legal tender therein, but were also, meant for exclusively in the Philippines. In this sense, they were therefore Philippine currency or Philippine money during said period. (Quinto *vs.* De Sahugon & Sahugon, CA–G.R. No. 481–R, Oct. 14, 1947; Pablo *vs.* Facundo et al., CA–G.R. No. 833–R, Nov. 13, 1947.) "By the word 'pesos' in the judgment of the court below, must be understood 'pesos' in the established currency of this country at the time when it was tendered. * * * "(Daugherty *vs.* Evangelista, 7 Phil., 40.) It is, therefore, seen that the payment made by the defendants in Japanese war notes in court, in satisfaction of the judgment in civil case No. 4603, was valid, not only because the money was then the legal tender, but also because in the judgment itself the court expressly ordered the said payment to be made with the clerk of court or to the plaintiffs directly. "Payment into court may satisfy the judgment where it is so provided in the judgment itself, or where the payment is made at the instance of, or is accepted by, the judgment creditor." (34 C. J., sec. 1057, p. 686.)

3. ID.; ID.; ID.; ARTICLES 1753 AND 1754 CIVIL CODE INAPPLICABLE.—The trial court and, with it, the plaintiffs seemed to be under the belief that this is a case governed by articles 1753 and 1754 of the Civil Code. Under the facts of the case, however, there is absolutely no proof that the obligors bound themselves "to return to the creditor an equal amount of the same kind and quality" or "the debtor owes a quantity equal to that received, and of the same kind and quality, even though there should have been a change in its value." The obligation was to pay in Philippine currency, and the judgment ordered the payment in Philippine currency. (11 Manresa, 1931, ed., 545.)

APPEAL from a judgment of the Court of First Instance of Quezon. Santiago, J.

The facts are stated in the opinion of the court.

Potenciano A. Magtibay for appellants.
Gabriel N. Trinidad for appellees.

PAREDES, *J.:*

It appears that on August 1, 1939, defendants spouses Luz Marquez and Dr. Casiano Sandoval received as a loan from the plaintiffs Maxima Valdeabella and her children, Fernando, Resurreccion, Federico, Nicanor, Arsenio, Salud and Claro, all surnamed Marquez, the sum of ₱30,000, Philippine currency, at 10 per cent interest annually, with first a mortgage on the properties specified in the contract, although it appears therein that the amount received was

₱33,000, the interest for the first year—from August 1, 1939 to July 31, 1940, to be paid in advance, having been included as part of the capital (Exhibits A and 15). In payment of interests corresponding to the subsequent years, the defendants were able to give ₱600 only, and when they offered another sum of ₱1,000, on account thereof, the plaintiffs rejected the offer and on September 25, 1941, initiated civil case No. 4603, for foreclosure of the mortgage. (Exhibits J and 15). While that case was pending in the Court of First Instance of Tayabas, the Pacific war broke out, and part of the records thereof was lost. On June 12, 1942, the court requested the parties, who were very close relatives, to appear for an amicable settlement (Exhibit 5), but the plaintiffs, represented by their co-plaintiff Federico V. Marquez, refused to desist from further prosecuting the case, in spite of the request of the defendant Dr. Sandoval and his attorney, Mr. Magtibay, to give them more time, because of their inability to raise funds on account of the war. So the trial court caused to be prepared a petition for the reconstruction of the records, and required the attorneys for both parties to sign the said petition, in order to obviate the necessity of complying with all the requisites of Act No. 3110, regulating the reconstitution of lost records. (Exhibits 1 and 12.) Long before the reconstruction of the records of civil case No. 4603, that is, on January 3, and 10 and February 7, 1942, the Japanese Military High Command, issued proclamations and orders, declaring the military notes on parity with the Philippine peso currency as legal tender, and imposing severe penalties upon any one who should refuse to accept said notes. (Exhibits E, E–1 and E–2.) After the reconstruction of the record, on September 21, 1942 (Exhibit 1–1), the case was heard, and judgment was rendered on September 23, 1942, condemning the defendants to pay within six (6) months, the sum of ₱33,000, Philippine currency, with interests due and unpaid and costs; and in default of said payment, to have the mortgaged properties sold at public auction and the proceeds thereof applied to the satisfaction of the judgment. (Exhibits B and 13.) Defendants appealed from said judgment to this court, and presented the corresponding record on appeal (Exhibit 15).

While the record on appeal was pending approval in the trial court, on December 1, 1942, plaintiffs asked for the special execution of the judgment (Exhibit 1) and on December 17, 1942, the court issued the order of execution (Exhibit 1-A). Upon petition, however, of the defendants, the court, on January 20, 1943, set aside the said order, it having been issued beyond the period prescribed by law (Exhibit 2). The plaintiffs, on Febru-

ary 26, 1943; asked for the appointment of a receiver of the mortgaged properties, so that the products could be applied to the payment of the capital and interest. (Exhibit 3.) The receiver was appointed on May 18, 1943, but the appointment was revoked, upon defendants' filing a counterbond (Exhibits 3–A, 3–B, 3–C, 3–L and 3–M). From May 18 to December 16, 1943, the defendants were the object of complaints for contempt of court filed by the plaintiffs for failure to deliver the properties to the receiver, from which they were exonerated (Exhibits 3–F, 3–G, 3–H, 3–I and 3–K).

In the meantime, the parties in the said civil case No. 4603, had submittted their respective briefs (Exhibits 16 and 17). While the appeal was pending decision, the defendants sold a parcel of land of more than 45 hectares, with 6,000 coconut trees bearing fruits, situated in the barrio of Ayusan, Dolores, Tayabas (Exhibit 7), for the purpose of satisfying the judgment, the confirmation of which was expected momentarily, as the defendants did not deny the debt, but simply sought more time within which to pay it (Exhibit 15). Immediately after the sale, the defendant, Doctor Sandoval, his son Emmanuel and his attorney, went to the house of the plaintiffs in Lucena, and offered the payment of the judgment on appeal, but plaintiff Federico Marquez did not want to receive the money. It being provided in the judgment that the payment might be made direct to the plaintiffs or to the court (Exhibits B, 13), the defendants deposited, "as per direction of Mr. Federico Marquez", in the office of the clerk, the sum of ₱45,956.77, Japanese military notes, for the total amount of the judgment, minus the sum of ₱86.20, for the deposit fee, of which the plaintiffs were duly notified (Exhibit 4). On April 1, 1944, the plaintiffs asked the court that they be authorized to withdraw from the office of the clerk of court the amount deposited, in full satisfaction of the judgment; the petition was granted in an order of June 1, 1944, and the plaintiffs withdraw the amount and deposited the same in the Philippine National Bank on June 2, 1944 (Exhibits 8, 8–A and D). On June 15, 1944, the plaintiffs presented a bill of costs in the trial court and in the appeals court which were paid by the defendants on July 28, 1944, (Exhibits 21 and 9). Defendants on July 28, 1944, filed a petition, asking, with the conformity of the plaintiffs, for the cancellation of the encumbrance on the certificate of title of the mortgaged properties, which was cancelled in an order of August 5, 1944 (Exhibits 10 and 10–A). On November 27, 1945, the plaintiffs presented a petition for a new execution of the judgment, on the ground that the payment therefor made in Japanese military notes, was illegal and in violation of the contract and of the judgment (Exhibit 23).

Defendants filed their opposition, on the ground that the court had no jurisdiction to act on the petition at that stage of the proceedings, and that the judgment was already satisfied. In its order, however, of December 27, 1945, the court abstained from taking action thereon and ordered the plaintiffs to file an independent suit (Exhibits 24 and 27).

In the present action, the trial court ordered the defendants to pay the plaintiffs the balance of ₱38,225.47, with interest, mentioned in the final judgment rendered by that court in civil case No. R–4603, from March 20, 1944 until paid; and declared the cancellation of the mortgage on the properties described in the contract, Exhibit A, void and of no effect, directing the register of deeds to make the corresponding corrections in the records, without costs. The trial court also declared that the final judgment referred to herein, which was, according to said court, beyond its jurisdiction to correct or amend, remained in all other respects in full force and affect.

The above are the facts on which the parties find no controversy at all, as they are based upon documentary proofs.

In deciding the present case, the trial court agreed with the plaintiffs in their theory that they had accepted the payment in Japanese war notes for the satisfaction of the judgment in civil case No. 4603, through threats and intimidation; and that the payment made was illegal and invalid, for not being in Philippine peso, thereby rendering the cancellation of the encumbrance on the mortgaged properties void and of no legal effect. The findings and conclusions of the trial court are now alleged to be erroneous, because they are not supported by the evidence and are against the law.

The facts are recited in the early part of this decsion, clearly show the plaintiffs' insistence on the payment and their readiness and willingness to receive the amount and to discharge the defendants from their obligation. The whole proceedings were initiated by the plaintiffs. It can not reasonably be assumed that the defendants themselves would have asked for the reconstruction of the record, when, as stated, they had requested the plaintiffs to desist from the prosecution of the case and to grant them more time within which to pay the debt, because of their inability to raise funds. If the plaintiffs had not pressed for payment; the defendants would not have made sacrifices to raise the funds with which to pay off their obligation. It was shown that defendant Doctor Sandoval, then engaged in the brokerage business, after exhausting all means, sold his unencumbered property of about 45 hectares, in Ayusan, Dolores, Quezon, together with an adjoining land, containing about 36 hectares, of his sister-in-law, Pura Marquez, in pursuance of the suggestion of Judge Cruz, and for fear that they might be denounced to the

Japanese Military authorities, as at that time, the plaintiff Federico Marquez was the Municipal Mayor of Lucena. In fact, defendant Doctor Sandoval was then being suspected and shadowed by the Japanese in Lucena, for being "a bad man here in Lucena," and as a *guerrilla* chief (t. s. n., 98–99), and Captain Cacdac had already investigated him on his activities.

In what did the alleged threat and intimidation consist? The plaintiffs want this court to believe that the said defendants, in offering the payment and in depositing the amount, had taken advantage of the "coerceive force" of the proclamations and orders of the Japanese High Command, to compel the plaintiffs to accept the military notes in payment of the judgment. They further allege that the attorney for the defendants had called the attention of Attorney Suarez for the plaintiffs, to the possible consequences of their refusal to withdraw the deposit. In support of this contention, Attorney Suarez declared: "The deposit or payment was finally accepted by the plaintiffs upon my personal advice as their lawyer, because previous to that I met Attorney Magtibay, the attorney then for the defendants, who said to me: 'Suarez, did you get the money in payment of the judgment? I told him: 'No, because the plaintiffs refused to accept unless the payment is done in Philippine genuine money'. He told me: 'Better look out. It may be known by the Japanese.' * * * And necessarily, I immediately advised Federico Marquez to accept the Japanese money right away in order to save our lives." (t. s. n., 29–30) "* * * and "he told me that, if it is my opinion, you as our lawyer, should do the necessary steps.' So I made the necessary petition and I signed the petition" (t. s. n., 32–33.). There was, therefore, first, the general coerceive power of the Japanese edicts; and second, the alleged veiled threat conveyed by the conversation just reproduced.

It was a matter of public knowledge that these proclamations and orders were issued in January and February, 1942, (Exhibits E, E–1, and E–2), and were in full force and effect in the occupied areas ever since. If those proclamations and orders constituted threat and intimidation, they must have been so, ever since their promulgation; and it can not now be successfully asserted that they produced their dreadful effects upon the mind of the plaintiffs only on April 1, 1944, when they asked for the withdrawal of the money on deposit with the approval of the trial court, because they were already aware thereof two years before. Considering the fact that intimidation exists when one of the contracting parties is inspired with a reasonable and well grounded fear of suffering all *imminent* and *serious* injury to his person or property, or to the person or property of his spouse, descendants or ascendants,

we hold that by the mere knowledge of the plaintiffs of the severe penalties imposed by the invaders of a violation of their proclamations or orders, regarding non-acceptance of military notes, which was common and applicable to all, and in the absence of direct acts showing the imminence or seriousness of such injury, intimidation does not exist.

"* * * it is evident that the payment made by the respondent-appellee and accepted by the petitioner-appellant during the Japanese occupation in compliance with the said orders of the Japanese military occupant, can not be considered as made under a collective and general duress, because an act done pursuant to the laws or orders of competent authorities can never be regarded as executed involuntarily or under duress or illegitimate constraint or compulsion that invalidates the act." (Phil. Trust Co. *vs.* L. M. Araneta et al., G. R. No. L-2734, March 17, 1949.)

Regarding the alleged threat to Attorney Suarez. The statement attributed to Attorney Magtibay, standing alone, would, in our opinion, not be sufficient to impel the plaintiffs to act against their will. Attorney Magtibay flatly denied the imputation; it is improbable that said attorney would have made the alleged threat, because, with such threat, we do not believe Attorney Suarez would have been terrorised or coerced, and, morever, there was no motive, either personal or professional, to threaten the plaintiffs or their attorney, to withdraw the money on deposit, as such deposit was made in compliance with the judgment, to either pay to the clerk of court or to the plaintiffs; and once the deposit was made, it was no longer the concern of the defendants, for the money, according to the theory of the defendants, had ceased to be theirs. At that time, also, plaintiff Federico Marquez was the Mayor of Lucena, appointed by the Japanese government, and knowing the influence of that position during the occupation, it is hard to believe that with the mere suggestion of his attorney of a possible danger, said Federico Marquez would have blindly obeyed him. The alleged conversation, if it ever occurred, could not have been the direct cause of accepting the payment and of withdrawing the amount on deposit, as Attorney Suarez was already aware of possible consequences by refusing to accept the war notes, even before the alleged conversation. Plaintiff Federico Marquez alleged that the mere deposit of the money, brought pressure upon him to accept the payment, as he would, by reason of his official position, be the first to show exemplary obedience to the orders of the Japanese; and should not be the one to expose his co-plaintiffs, who were his mother, brothers and sisters, to exceptional danger. If this is true, then the primordial consideration in the acceptance of the payment was to set an example of obedience and loyalty to the Japanese, their proclamation and orders.

Plaintiff Federico Marquez testified:

"Q. But that was in March, 1944, that you wanted Philippine currency in payment of the judgment, was it not?—A. Yes, sir.

"Q. You were still Mayor of Lucena?—A. Yes, sir.

"Q. Then you were not afraid to demand the payment of Philippine currency at that time?—A. I was afraid but I am trying my best to protect our interest if possible, and I don't want to accept.

* * * * * * *

"Q. Do you mean to say that you were afraid but there was no risk of serious consequences that is why you demanded the payment in Philippine currency?—A. I don't know whether there is danger in doing it, but I am trying my best if possible, if I could find a way by which I could refuse that offer of that Japanese notes." (t. s. n., 62–64.)

from which we can deduce that, after all, the plaintiffs, more particularly their representative Federico Marquez, were not afraid to refuse the receipt of military notes, and if they had actually withdrawn the deposit, they did so of their own free will and accord.

No satisfactory explanation was given why the plaintiffs had withdrawn the deposit from the clerk of court, or why they had presented the bill of costs in the court of first instance and in the Court of Appeals, which were paid to them by the defendants on July 28, 1944, also in war notes (Exhibit 9), or why did they prepare the petition for the cancellation of the encumbrance on the mortgaged properties (Exhibit 10). It would be taxing our credulity to the limit, if we would believe that these were acts of coerced persons. These acts were those of men whose wills had not been dwarfted by duress. And if duress or intimidation ever existed at all, it came from plaintiffs' attorney himself, and not from the defendants.

Other factors had been brought out during the hearing which show that plaintiffs were not coerced into accepting Japanese military notes. *First,* the plaintiffs know that the proclamations and orders of the Japanese High Command had made the military notes on parity with the Philippine peso, when they refused to desist from the further prosecution of civil case No. 4603. *Second,* when the plaintiffs asked for the immediate execution of the judgment in said case, which was pending on appeal, they knew or should have expected that the proceeds from the execution would be in military notes, because there was no other currency in circulation at the time the said sale would have taken place. *Third,* when the plaintiffs asked that the mortgaged properties be placed under receivership for the purpose of applying the products to the payment of unpaid interests and the capital, they knew or should have expected that they would also received military notes. *Fourth,* the costs in both courts collected by plaintiffs, without intimidation of any sort, consisted of military notes, for which, to all appearances, they were benefitted.

Plaintiffs' contention that payment of the judgment should be in Philippine peso, pre-war currency of the Philippine Commonwealth Government, is untenable. The status of the law on the question of currency is expressed in the following pronouncements. "A payment made by a debtor during the enemy occupation and accepted by the creditor, is valid and extinguishes the former's obligation." (Hilado *vs.* De la Costa, G. R. No. L–150, Apr. 30, 1949.) "The Japanese military notes had acquisitive power and was of legal currency at the time tender of payment and consignation was made. * * * Up to the present time, there is no legislative enactment denying recognition and effect to payments made for settling obligations matured during the ominous occupation of the Islands by the Japanese military force." (Ocampo *vs.* Potenciano, CA–G. R. No. 182–R, Jan. 12, 1948.) "The court's ruling that the repurchase of the lots should have been effected in Commonwealth currency, is bereft of reason and justice and is not the law. Japanese war notes were the only money in circulation in March, 1944. It seems to us extremely unjust and unreasonable to expect the administratrix at that time to repurchase the lots in other means of exchange." (Cunanan *vs.* R. Amparo and B. Soriano, G. R. No. L–1313, Feb. 16, 1948.) "But the obligation of a contract to pay money is to pay that which the law shall recognize as money when the payment is to be made." (Haw Pia *vs.* China Banking Corp., G. R. No. L–534, Apr. 9, 1948.) The Japanese military notes in circulation in the Philippines during the occupation, not only were then legal tender therein, but were, also, meant for exclusively in the Philippines. In this sense, they were therefore Philippine currency or Philippine money during said period. (Quinto *vs.* De Sahagun and Sahagun, CA–G. R. No. 481–R, Oct. 14, 1947; Pablo *vs.* Facundo et al., CA–G. R. No. 833–R, Nov. 13, 1947.) "By the word 'pesos' in the judgment of the court below, must be understood 'pesos' in the established currency of this country at the time when it was tendered. * * *" (Daugherty *vs.* Evangelista, 7 Phil., 40.) It is therefore, seen that the payment made by the defendants in Japanese war notes in court, in satisfaction of the judgment in civil case No. 4603, was valid, not only because the money was then the legal tender, but also because in the judgment itself the court expressly orderd the said payment to be made with the clerk of court or to the plaintiffs directly. "Payment into court may satisfy the judgment where it is so provided in the judgment itself, or where the payment is made at the instance of, or is accepted by, the judgment creditor." (34 C. J., sec. 1057, p. 686.) By a great preponderance of evidence, it was also established that when Doctor Sandoval, his son Emmanuel and his attorney offered the payment of the judgment to

the plaintiffs, the latter did not refuse the payment, but plaintiff Federico Marquez told them to deposit the same with the clerk of court. And because Doctor Sandoval remarked that defendants were not willing to pay the deposit fee, Federico replied that the plaintiffs would answer for it. Under that understanding, defendants deposited with the clerk of court the sum of ₱45,956.77, minus ₱86.20, for the deposit fee. This incident must have been true, because the plaintiffs were then either in need of money, or, knowing that defendants did not have funds then, for they could not even pay the interest before the war, wanted to have the land. If, as alleged, plaintiffs did not need money, it was not explained why they pressed for the special execution, when the properties were a sufficient security to answer for the obligation. The only plausible explanation for their attitude, was their intense desire to own the properties in question, which consisted of 20 hectares of rice field and about 20,000 coconut trees. But defendants, sensing the object of the plaintiffs, after making a sacrifice sale of other unencumbered properties, paid the judgment. It may be possible that, as far as the plaintiffs are concerned, they had expected the payment to be made in the so-called "genuine" Philippine currency, but as the Supreme Court has well said: "There is a well recognized distinction between the expectation of the parties to a contract and the duty imposed by it. Were it not so, the expectation of results would be always equivalent to a binding engagement that they should follow." (Haw Pia *vs.* China Banking Corp., *supra.*)

The plaintiffs posed this question: Porque los Apelantes urgieron tanto la venta del terreno (referring to the unencumbered lands at Ayusan) y el pago de su obligación hallandose aun pendiente la decisión de su apelación en la causa civil No. 4603? (p. 38, Appellees' Brief.) Plaintiffs themselves solved their doubts, by stating that as the return of the Americans was approaching, it was easier for the defendants to pay with military notes which then had depreciated in value than to pay in genuine Philippine peso. Granting, for the purposes of our discussion, that this was defendants' objective, was there anything unlawful in the act of obligors in setting their obligation, notwithstanding the pendency of an appeal? The appeal in this case was taken by defendants to gain time, because the plaintiffs were then pressing for a special execution of the judgment, after rejecting the proposed settlement made by defendants. Undoubtedly, there was an attempt on the part of the plaintiffs to outwit the defendants which proved a real boomerang.

The trial court and, with it, the plaintiffs seemed to be under the belief that this is a case governed by articles 1753 and 1754 of the Civil Code. Under the facts of the

case, however, there is absolutely no proof that the obligors bound themselves "to return to the creditor an equal amount of the same kind and quality" or "the debtor owes a quantity equal to that received, and of the same kind and quality, even though there should have been a change in its value." The obligation was to pay in Philippine currency, and the judgment ordered the payment in Philippine currency. Commenting on the articles relied upon the decision, the noted commentator Manresa said: "que en los prestamos de dinero, la obligación es reintegrar la suma recibida, porque en tales casos no es la espacie de la cosa lo que constituye la materia u objeto del mutuo, como sucede en las cosas fungibles, sino el valor numérico representado por la moneda o por el papel del Estado, salvo estipulación en contrario, y por ende el aumento o depreciación nada tiene que ver." (11 Manresa, 1931 Ed., 545.)

There also seems to be some inconsistency in the judgment appealed from. Although the trial court declared that plaintiffs had accepted the payment of the judgment in military notes under threat and intimidation; nevertheless, it credited the defendants with the amount of ₱7,645.09 in present Philippine peso or currency, as the equivalent of the amount of ₱45,870.57 in military notes paid in satisfaction of the judgment, in accordance with the Ballantyne sliding scale of value. The fact that the defendants were credited with such amount, shows the trial court's recognition of the validity of the payment.

We hold that the trial court has committed the first and second assignments or error which would justify the reversal of the judgment appealed from, and hereby declare that plaintiffs-appellees has accepted the Japanese war notes in payment of the judgment in civil case No. 4630, of their own free will and accord, and that the said payment was legal and in full satisfaction of the said judgment. The complaint is, therefore, dismissed, without special pronouncement as to costs. So ordered.

Labrador and *Natividad, JJ.*, concur.

Case dismissed.

[No. 2987–R. January 31, 1950]

LEON S. RAMOS, plaintiff and appellant, *vs.* FILEMON M. SALCEDO, defendant and appellee

1. CONTRACTS; EXECUTORY CONTRACT OF SALE; TITLE DOES NOT PASS TO BUYER UNTIL CONDITION IS FULFILLED; ARTICLE 1451, NOT ARTICLE 1466, CIVIL CODE, APPLICABLE; LIQUIDATED DAMAGE; CASE AT BAR.—A sale is an executory contract, "if the seller merely promises to transfer the property at some future date, or the agreement contemplates the performance of some act or condition necessary to convert the executory into an executed contract, until the act is performed or the condition fulfilled, which is necessary to complete the transfer under such a contract

no title passes to the buyer as against the seller or persons claiming under him." (McCullough & Co., *vs.* Berger, 43 Phil., 823, 831.) While it is conceded that a mere recital that the seller "agrees to sell" may not be conclusive that the title was not intended to pass immediately, it is, however, clear from the agreement Exhibit A that it imports an executory contract. Being an executory contract, it did not, therefore, operate to pass title to or dominion over the property (Mas *vs.* Lanuza, 5 Phil., 457, 458); and the vendor is not bound to deliver or give the material possession of said property to the vendee, merely upon its execution. Article 1466, Civil Code, and the cases of Florendo *vs.* Foz, 20 Phil., 388 and Warner, Barnes & Co., Ltd., *vs.* Insa, 43 Phil., 505, are not applicable to the present case, because the contracts involved therein are executed ones, absolute sales; and, moreover, in said cases, the question of whether the contracts were executed or executory, was not raised at all. The contract, as stated, being executory, falling, as it does, under the provisions of article 1451 of the Civil Code; and appellant, having failed to comply with his part of the contract, his liability should be determined by the provisions on obligations and contracts, more particularly of article 1124 of the Civil Code, which gives the person prejudiced the right to choose between exacting the fulfillment of the obligation or its resolution, with indemnity for damages and payment of interest, in either case. Taking into consideration, therefore, these circumstances, and it appearing that the principal purpose of the indemnification agreed upon was not to provide for the payment of actual anticipated and liquidated damages but the penalization of a breach of the contract (Laureano *vs.* Kilayco, 32 Phil., 194). We find that the liquidated damages are excessive and hereby fix the same in the sum of ₱500.

2. ID.; ID.; ID.; BREACH OF CONTRACT; PARTIAL OR IRREGULAR PERFORMANCE OF OBLIGATION BY DEBTOR; PENALTY MAY BE REDUCED BY THE COURT.—"The judge shall equitably mitigate the penalty if the principal obligation should have been partly or irregularly performed by the debtor" (art. 1154, Civil Code), by reducing the stipulated penalty according to his sound discretion (Lambert *vs.* Fox, 26 Phil., 588).

3. ID.; ID.; ID.; ID.; INTEREST; PARTY CAUSING BREACH OF CONTRACT NOT ENTITLED TO INTEREST.—Inasmuch as appellant breached the contract, it is believed he is not entitled to any interest at all.

APPEAL from a judgment of the Court of First Instance of Manila. Dinglasan, J.

The facts are stated in the opinion of the court.

Placido Ramos for appellant.
Rovero, Nicolas & Magsalin for appellee.

PAREDES, *J.:*

On February 14, 1947, plaintiff Leon S. Ramos and defendant Filemon M. Salcedo entered into a contract (Exhibit A), whereby the defendant agreed to sell, transfer and convey to plaintiff, a parcel of land, lot No. 546, cadastral survey of Hermosa, G. L. R. O. case No. 1423, covered by transfer certificate of title No. 5970 of the Land Records of Bataan, issued in the name of vendor Salcedo, for and

in consideration of the sum of ₱26,900, which the vendee Ramos undertook to pay in the following manner:

₱8,000 on February 14, 1947,
₱8,900 within fifteen days from February 14, 1947; and
₱8,000 within thirty days from February 14, 1947.

It was also stipulated that upon full payment of the purchase price in the manner stated, the vendor bound himself to execute a formal deed of conveyance in favor of the vendee; that pending full payment of the purchase price, the vendor authorized the vendee to negotiate with the Rehabilitation Finance Corporation or any other entity, for a loan in the name of the vendor, who bound himself to sign all necessary papers in connection with said loan, provided that any loan which might be obtained was to be applied to the balance of the purchase price; that in the event the vendee should fail to make the payments in the manner aforestated, the agreement would automatically be declared resolved, the vendee binding himself to pay the vendor the sum of ₱2,000 as liquidated damages; and that in case of the rescission of the agreement, the loan which might be obtained by virtue of the authority granted the vendee, would be assumed by the vendor; otherwise the loan would be applied to the purchase price and the obligation would be assumed by the vendee in case of final transfer of the property to him. In accordance with this agreement, the vendee paid to the vendor the amount of ₱8,000 on February, 1947, receipt of which was acknowledged by the vendee in Exhibit B. The second and third amounts had not been paid up to the filing of the complaint.

Plaintiff alleged that, after having paid the first payment of ₱8,000, he went to take possession of the property sold, but could not do so, because adverse occupants were on the property, and that because of the failure of the defendant-vendee to place him in possession thereof, he did not make the second payment under the contract, and, instead, demanded from the vendee the return to him of the amount of ₱8,000 already paid.

The trial court hold that plaintiff was entitled to recover from the defendant only the balance of ₱8,000 paid by him, minus the sum of ₱2,000, which was forfeited as liquidated damages, or the sum of ₱6,000. It, therefore, ordered the defendant to pay to the plaintiff the sum of ₱6,000, with legal interest, from the filing of the complaint until paid, without special pronouncement as to costs. This appeal is interposed by plaintiff from that part of the judgment, requiring him to pay liquidated damages in the sum of ₱2,000. Appellant contends that the trial court erred (1) in holding the agreement, Exhibit A, as a mere promise to sell; (2) In holding that defendant, as vendor, was not bound to deliver the property, object of the agreement, to plaintiff; (3) In holding that the non-payment by plaintiff

of the remaining two installments was not based on a legal and reasonable cause which frees him from any liability for liquidated damages; and (4) In not allowing plaintiff legal interests on the sum of ₱8,000 counted from February 14, 1947. The first three errors assigned are taken up together, inasmuch as they raised merely two questions of allied nature, to-wit: whether plaintiff-appellant has become entitled to the material possession of the property, merely upon the execution of the agreement, Exhibit A, the resolution of which, in turn, depends upon the question of whether said Exhibit A is an executory or executed contract.

A sale is an executory contract, "if the seller merely promises to transfer the property at some future date, or the agreement contemplates the performance of some act or condition necessary to complete the transfer. Under such a contract, until the act is performed or the condition fulfilled, which is necessary to convert the executory into an executed contract, no title passes to the buyer as against the seller or persons claiming under him." (McCullough & Co. *vs.* Berger, 43 Phil., 823, 831.) While it is conceded that a mere recital that the seller "agrees to sell' may not be conclusive that the title was not intended to pass immediately, it is, however, clear from the agreement Exhibit A that it imports an executory contract. In it, the seller and appellee merely "agreed to sell, transfer and convey to purchaser-appellant, the property at some future date, and it contemplates the performance of some act or condition necessary to complete the transfer, that is, payment by appellant of all the installments within the periods specified in paragraph 3 thereof; that according to paragraph 4 of the same contract, only upon the full payment of the purchase price in the manner stipulated in paragraph 3 shall the formal deed of conveyance of said property in favor of the appellant be executed by the appellee; and that, according to paragraph 6, the non-payment of such price as agreed upon, renders the contract automatically rescinded. Being an executory contract, it did not, therefore, operate to pass title to or dominion over the property (Mas *vs.* Lanuza, 5 Phil., 457, 458); and the appellee is not bound to deliver or give the material possession of said property to appellant, merely upon its execution. Although under the same agreement, the appellant was authorized to obtain a loan; nevertheless, the said loan should be negotiated in the name of the appellant, provided the amount of the loan would be applied to the payment of the purchase price. And appellant considered himself as not having acquired the ownership of the property in view of his failure to pay the installments, when, on cross-examination, he admitted that "the transfer certificate of title is in his (defendant's) name because I have not yet paid everything." (T. s. n., 14.) Lastly, the stipulation to the effect that

"said loan shall be applied to the purchase price and the obligation assumed by the party of the second part, in case of final transfer of the property to him," reveals the intention of the parties that ownership of the land had not passed.

Conceding, for the purposes of argument, that appellant had the right to occupy or possess the land, had appellee breached the warranty for legal eviction? Factually, the appellee was in possession of the fishpond in question. He is the registered owner of the land, his title thereto being evidenced by T. C. T. No. 5970 of the Register of Deeds of Bataan. This title is free from all liens and encumbrances, there being no annotation of any kind thereon. Appellant, in fact, for a time had in his possession this title, with which he negotiated with the RFC for a loan, with intention to give it as security. Cipriano Cruz, caretaker of appellee of the said fish pond, declared that it had always been in appellee's possession, and that there was no house in said place at all, which facts belie the testimony of Damaso Marcelino, to the effect that he and his co-heirs were in possession of the land, only since the Japanese occupation, but never paid any tax thereon (t. s. n., 23–24). Appellant knew or ought to have known at least, that the claim of Damaso and others on this land, could not have been better and more effective than the Torrens title he was then holding. The mere fact that appellee, after appellant had notified him of his decision to rescind the contract, had succeeded in mortgaging the same fish pond to the Philippine National Bank, shows that there was no adverse claim at all, and that the occupant of the land was the appellee. It is to be presumed that the bank had made the necessary inquiries regarding the title and the property before accepting them as security. Not having been able to take possession of the land at any time, as claimed by him now, appellant could not have been an object of ejectment by Damaso or by any other person. And there being no eviction proceeding, one can readily see that appellee's liability for warranty of legal eviction, had not arisen. As the trial court remarked: "What really happened was the plaintiff, hoping that he would be able to obtain a loan from the Rehabilitation Finance Corporation, agreed to purchase the property in question from the Defendant and expected to pay the balance of the purchase price out of the proceeds of the loan; but, when he failed to obtained the loan and could not continue making the payments due, he decided to back out from his agreement and demanded the return of the amount which he had given out as down payment; and upon refusal of the defendant to return the said amount, this action was brought to recover the same."

Appellant cited article 1466, Civil Code, and the cases of Florendo *vs.* Foz, 20 Phil., 388 and Warner, Barnes & Co.,

Ltd. *vs.* Inza, 43 Phil., 505, in support of his contention that Exhibit A is a perfected contract. These cases, however, are not applicable to the present case, because the contracts involved therein are executed ones, absolute sales; and, moreover, in said cases, the question of whether the contracts were executed or executory, was not raised at all.

The contract, as stated, being executory, falling, as it does, under the provisions of article 1451 of the Civil Code; and appellant, having failed to comply with his part of the contract, his liability should be determined by the provisions on obligations and contracts, more particularly of article 1124 of the Civil Code, which gives the person prejudiced the right to choose between exacting the fulfillment of the obligation or its resolution, with indemnity for damages and payment of interest, in either case. In this particular case, a resolution of the contract was chosen, and both parties seem to agree that certain portion of the amount paid should be awarded to the appellant. If we have to adhere strictly to the terms of the contract, the liquidated damages would be ₱2,000. But the fact should be taken into account that the appellant had at least partly performed his part of the contract, by paying the first installment, and that the appellee had not suffered any material damage at all, by appellant's failure or refusal to pay the second and last installments. On the other hand, appellee, notwithstanding appellant's breach, was able to obtain a loan from the bank on the security of the property in question. Taking into consideration, therefore, these circumstances, and it appearing that the principal purpose of the indemnification agreed upon was not to provide for the payment of actual anticipated and liquidated damages but the penalization of a breach of the contract (Laureano *vs.* Kilayco, 32 Phil., 194), we find that the liquidated damages are excessive and hereby fix the same in the sum of ₱500. "The judge shall equitable mitigate the penalty if the principal obligation should have been partly or irregularly performed by the debtor" (art. 1154, Civil Code), by reducing the stipulated penalty according to his sound discretion (Lambert *vs.* Fox, 26 Phil., 588). The appellant claims legal interest on the amount recoverable by him to be counted from February 14, 1947, the date of the contract, and not from the date of the filing of the complaint, as adjudged by the trial court. Inasmuch as appellant breach the contract, it is believed he is not entitled to any interest at all.

We, therefore, order the defendant-appellee to pay to the plaintiff-appellant the sum of ₱7,500, without interest. With this modification, the judgment appealed from hereby

is, in all other respects, affirmed, without special pronouncement as to costs. So ordered.

Labrador and *Natividad, JJ.*, concur.

Judgment affirmed.

[No. 3165-R. January 31, 1950]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* DIONISIO DIZON ET AL., defendants and appellants

CRIMINAL LAW; ROBBERY; EVIDENCE; CONFESSIONS, THEIR SUFFICIENCY AS EVIDENCE OF CONSPIRACY; CASE AT BAR.—Although only one detective testified to the voluntariness of confessions, Exhibits A, C, D, and E, and only one patrolman said that confession Exhibit F had been given freely, this fact alone is not a good reason to render the said confessions insufficient to sustain a conviction. (Moran's Comments on the Rules of Court, Vol. III, p. 107). All the five confessions tally with one another on how the crime was committed, when and where it was committed, the subject of the robbery, the fruits of the crime and the participation of each and everyone of the accused in the crime. When the accused gave these confessions they were separated from one another, thus excluding the possibility of collusion. Such confessions, can, therefore, be considered sufficient evidence of the conspiracy among the appellants in the commission of the instant crime (People *vs.* Saturnino Santos, 38 Official Gazette No. 113, p. 2511).

APPEAL from a judgment of the Court of First Instance of Manila. Amparo, J.

The facts are stated in the opinion of the court.

Bustos & Bustos for appellants Dizon and Bautista.
Florentino T. Ocampo for appellant Lopez.
Mariano Lozada for appellant Plaganas.
Yuseco & Abdon for appellant Liwanag.
First Assistant Solictor General Roberto A. Gianzon and *Solicitor Rafael P. Ceniza* for appellee.

MARTINEZ, *J.:*

Hernando de Castro y Burgos, Dionisio Dizon y Guevara, Felipe Lopez y Herrera, Jose Plaganas y Payawal, Jose Liwanag y Carpio and Leonardo Bautista y Herrera were prosecuted for robbery by means of violence against persons in the Court of First Instance of Manila. Upon arraignment, Hernando de Castro y Burgos pleaded guilty and was sentenced to the penalty provided by law in a separate decision. Dionisio Dizon y Guevara, Felipe Lopez y Herrera, Jose Plaganas y Payawal, Jose Liwanag y Carpio and Leonardo Bautista y Herrera stood trial, at the end of which, each and everyone was sentenced to suffer the indeterminate penalty of from six (6) years of *prisión correccional* to

ten (10) years of *prisión mayor* and to pay indemmity in the amount of ₱35, with costs.

All the accused, with the exception of Hernando de Castro y Burgos, appealed from the decision alleging that the trial court committed error in finding their confessions voluntary, and in convicting them on the strength of the said confessions.

On January 30, 1948, one Adriano Perlado was walking alone on General Luna street in the direction of the City Hall when a passenger jeepney carrying six persons passed by and stopped ten meters ahead of him. Two of the passengers of the jeepney alighted and rushed before Perlado. One of them, who turned out to be Felipe Lopez, threatened him with a pistol and the other, later identified as Hernando de Castro y Burgos, stripped him of his wrist watch valued at ₱400 and a Parker-51 fountain pen valued at ₱25, and thereafter Felipe Lopez struct him with his fist in the stomach. Perlado was not able to see how Lopez and De Castro got away from the place, for he was stunned by the blow he received, but noticed that the jeepney stood in waiting during the time he was being dispossessed of his belongings. He was not able to identify the rest of the passengers in the jeepney. Perlado immediately reported the matter to the police officer at the nearest police station. Detective Dalisay and Patrolman Barlis took over the case and acting on a tip, were able to put Felipe Lopez y Herrera under arrest in the morning of the following day, and the rest in the afternoon. All of them were immediately subjected to an investigation, in the course of which each and everyone directly admitted having taken part in the General Luna Street robbery committed at four o'clock in the afternoon of January 30, 1948; each and everyone of them signing a confession (Exhibits A, C, D, E and F).

In their defense, all the appellants disclaimed having knowledge of the alleged robbery commited in Gral. Luna St. on January 30, 1948. They disowned being acquainted with one another with the exception of Dizon and Bautista who admitted to know each other. Confronted with their confessions, they contended that they affixed their signatures thereto under physical coercion, claiming that their alleged confessions were contrived to secure their conviction.

The trial judge remarked:

"The two peace officers Dalisay and Barlis positively testified that the statements Exhibits A, C, D, E, and F, were signed freely and voluntarily. No proof has been presented by the defense showing improper motive on the part of these witnesses and their testimony should be given full credit. They were not actuated by any desire to prejudice the accused, and they stated nothing but the truth. The alleged maltreatment or promise of immunity, which is entirely uncorroborated, is not sufficient to overcome the evidentiary force of the testimony of said peace officers."

We have examined the record and we have not found any reason for which we should disturb the opinion of the court *a quo* on the spontaneity of the questioned confessions. Indeed the whole account of the alleged maltreatment seems exaggerated in parts and trivial in others. For example, Jose Plaganas would make us believe that he was beaten up in the presence of many people. This same Plaganas answering a question in cross-examination said that he was away from his co-accused when he received the maltreatment, and did not know how the rest were dealt with; while Felipe Lopez recounted that he was forced to sign an incriminating statement out of shear fear from seeing his co-accused brutally manhandled when they refused to confess the crime. On the other hand, Dizon stated that he signed his confession merely because he was asked to do so, and because he was told by someone, whose name he could not remember, that it was the only way he could get out of prison.

No one was heard to have complained of, or known to have sustained physical injury as a result of the supposed bodily punishment they had been subjected to. The accused are all of mature age, hardened to the complex life of this City where they have resided for many years.

It is true that only Detective Dalisay testified to the voluntariness of confessions, Exhibits A, C, D and E. It was only Patrolman Barlis who said that confession Exhibit F had been given freely. This fact alone is, however, not a good reason to render the said confessions insufficient to sustain a conviction. On this point, Chief Justice Moran comments:

"This does not mean, however, that the non-production of the other persons present at the time the confession was made will render valueless the testimony of the only witness who testifid thereto. The rule in such cases is that courts must be slow to accept the single testimony if it is disputed. The sufficiency of such testimony depends upon the credibility of the witness and all the circumstances of the case. *If the court, taking into account all the circumstances, finds the testimony convincing, it will be sufficient to established the confession notwithstanding the non-production of the other persons present at the time such confession was made.*" (Comments on the Rules of Court, Vol. III, p. 107.)

Each and everyone of the accused admitted that a watch was part of the loot from the robbery in General Luna St. on January 30, 1948. This watch was found in possession of Felipe Lopez and proven to be the watch snatched away from Perlado on the occasion of his holdup. The questioned confessions are, therefore, supported by the *corpus delicti.*

All the five confessions tally with one another on how the crime was committed, when and where it was committed, the subject of the robbery (a Filipino, later answering to the name of Adriano Perlado), the fruits of the crime (a

watch and a fountain pen, of which Perlado claimed to have been despoiled), and the participation of each and everyone of the accused in the crime. When the accused gave these confessions they were separated from one another, thus excluding the possibility of collusion. Such confessions can, therefore, be considered sufficient evidence of the conspiracy among the appellants in the commission of the instant crime (People *vs.* Saturnino Santos, 38 Official Gazette No. 113, p. 2511).

The penalty provided for the crime is *prisión correccional* in its maximum period to *prisión mayor* in its medium period, and for having used a motor vehicle in the commission of the crime the accused should be sentenced to the indeterminate penalty of from two (2) years, ten (10) months and twenty-three (23) days of *prisión correccional* to eight (8) years and twenty-one (21) days of *prisión mayor*. The indemnity should be ₱25, which is the value of the unrecovered fountain pen. With the modifications above indicated, let the decision of the lower court be affirmed.

Endencia and *Rodas, JJ.*, concur.

Judgment modified.